

**SUPREME COURT OF ARIZONA
FIDUCIARY BOARD**

**IN THE MATTER OF FIDUCIARY
LICENSE:**

**JEANNEAN SABATINA,
License Number 20615**

and

**NICOLE SABATINA,
License Number 20684.**

**No. FID-NFC-17-0027 and
FID-NFC-17-0028**

FINAL ORDER

On July 19, 2018, the Fiduciary Board ("Board") filed a Notice of Formal Statement of Charges and Right to Hearing in the above-captioned matter with the Honorable William J. O'Neil ("Judge O'Neil"). Jeannean Sabatina and Nicole Sabatina (collectively "the Sabatinas") timely requested a hearing and a hearing was held beginning February 13, 2019 and concluding February 21, 2019. On November 15, 2019, Judge O'Neil filed his Findings of Fact, Conclusions of Law, and Recommendation in complaint numbers FID-NFC-17-0027 and FID-NFC-17-0028 [Exhibit A]. Pursuant to ACJA § 7-201(H)(22), the Board may adopt, reject or modify the Hearing Officer's recommendation in whole or in part. The Board adopts the Hearing Officer's recommendation report as indicated in this Order. The Board holds the authority to proceed with this action pursuant to ACJA § 7-201(D)(5)(c).

JURISDICTION

Pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201 and § 7-202, the Board served Notice of Formal Statement of Charges and Right to Hearing to the Sabatinas via their appointed counsel on August 1, 2018. The Board has jurisdiction over this matter as the Jeannean Sabatina's license was granted on July 9, 2009 and Nicole Sabatina's license was

1 granted on June 1, 2012. Both licenses have been renewed without interruption through the
2 current licensure period.

3 Pursuant to ACJA § 7-201(H) and ACJA § 7-202(H), the matter was investigated, and
4 the Sabatinas were provided an opportunity to respond to the complaint, participate in the
5 investigation of the complaint, file an Answer to the Notice of Formal Statement of Charges, and
6 request a hearing.

7 PROCEDURAL HISTORY

8 1. On October 25, 2017, a Director Initiated Complaint was filed involving the Sabatinas.

9 2. On November 3, 2017, the Division sent the Sabatinas a copy of the complaint and notice
10 of the ACJA § 7-201(H)(3)(c) requirement the Sabatinas submit a written response to the
11 complaint within thirty (30) days. Division records confirm delivery of the mailing on
12 November 6, 2017.

13 3. The Sabatinas provided a timely written response to the complaint as required by ACJA
14 § 7-201(H)(3)(c).

15 4. On June 26, 2018, pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-
16 201(H)(5)(a)(3), Probable Cause Evaluator Mike Baumstark entered a finding probable cause
17 exists in complaint numbers 17-0027 and 17-0028.

18 4. On July 12, 2018, the Fiduciary Board ("Board") accepted the finding of the Probable
19 Cause Evaluator and entered a finding grounds for formal disciplinary action exists as to
20 Allegations 1 through 8 pursuant to ACJA § 7-201(H)(6)(a) and voted to revoke the Sabatinas'
21 licenses.
22

23 5. On August 1, 2018, the Sabatinas were served, via their appointed counsel, with a Notice
24 of Formal Statement of Charges and Right to Hearing in complaint numbers 17-0027 and 17-
25

0028. The Sabatinas timely requested a hearing and a hearing was held beginning February 13, 2019 and concluding February 21, 2019.

FINDINGS OF FACTS

The Board adopts the Findings of Fact in Exhibit A as the Findings of Fact in this matter.

CONCLUSIONS OF LAW

The Board adopts the Conclusions of Law contained in Exhibit A as the Conclusions of Law in this matter.

FINAL DECISION and ORDER

Having adopted the above-referenced findings and conclusions, the Board orders the following disciplinary sanction in complaint numbers 17-0027 and 17-0028:

- a) Revoke Jeannean Sabatina's license, pursuant to ACJA § 7-201(H)(24)(a)(6)(i);
- b) Revoke Nicole Sabatina's license, pursuant to ACJA § 7-201(H)(24)(a)(6)(i);
- c) Issue a cease and desist order enjoining the Sabatinas from representing themselves to the public as licensed fiduciaries, pursuant to ACJA § 7-201(H)(24)(a)(6)(g);

DATED this 19 day of November, 2019.


Deborah Primock, Chair
Fiduciary Board

1 A copy of the foregoing hand delivered and/or mailed this 24th day of November 2019, to:

2 Gary Strickland
3 Warner Angle Hallam Jackson & Formanek PLC
4 2555 East Camelback Road, Suite 800
5 Phoenix, Arizona 85016-9267
6 Counsel for Licensees

7 Nancy Bonnell
8 Caroline Shoemaker
9 Assistant Attorneys General
10 Agency Counsel Section
11 Office of the Arizona Attorney General
12 2005 North Central Avenue
13 Phoenix, Arizona 85004-2926

14 David Withey, Assistant Counsel
15 Administrative Office of the Court
16 1501 West Washington Street
17 Phoenix, Arizona 85007

18 By:

19 
20 Michelle Martinez, Manager
21 Certification and Licensing Division
22
23
24
25

EXHIBIT A

**UNDER THE ARIZONA CODE OF JUDICIAL ADMINISTRATION
Fiduciary Board
BEFORE THE ASSIGNED HEARING OFFICER**

**IN THE MATTER OF LICENSED
FIDUCIARIES:**

**JEANNEAN SABATINA,
License Number 20615**

and

**NICOLE SABATINA,
License Number 20684**

FID-NFC-17-0027 & 17-0028

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION**

FILED NOVEMBER 15, 2019

Jeannean and Nicole Sabatina, are individually referred to by their first names and collectively referred to as "Licensees" or "Sabatinas." With Love Jeannean LLC ("WLJ") is not a licensed fiduciary entity. It is a corporation formed by Jeannean and owned by the Sabatinas and another individual to limit their liability. Their fiduciary license business, geriatric care, nursing and assorted services to wards is run under that business. The Arizona Revised Statutes Annotated are referred to as "ARS." The Arizona Code of Judicial Administration is referred to as "ACJA." A Power of Attorney is referred to as "POA." Presiding Disciplinary Judge, acting as the hearing officer in this matter, is referred to as "PDJ."

PRELUDE WITH FINDINGS

This is a case of the unintended consequences of the licensure of fiduciaries. These arise by the misuse of the appearance of authority and suggestion of power imparted by that licensure. These unintended consequences in this case includes the exploitation of our most vulnerable citizens. This exploitation is effective due to the unpreparedness of the government, the public, and our most vulnerable citizens to anticipate, prevent or even recognize the patterns of intentional, methodical, and licentious disregard for the limitations and safeguards of the law regarding that licensure. This case exemplifies the insidious consequences that can arise from the ease and lure of exploitation when the systems of safeguard default to trust in licensure yet are ill-equipped to prevent or recognize the misuse of that licensure.

This is because such oversight is asking the governmental systems of safeguards to do that for which they have not been trained to effectively question because of the trust impacted by that licensure.

The misery of the intended conduct of the misuse of licensure are laid bare by this record. The corruption of the lofty goals of licensure is sought to be exorcised by the hammering out at length the extensive manipulation and misuse of that authority. It is a potential for fraud which remains available, dormant, and waiting. It is exemplified in the abuse of the psychologist, painter, and teacher, Jannette

Kimble, who at 85 years of age was intentionally and methodically exploited upon the anvil of that licensure.

Janette Kimble

On February 27, 2015, Janette Kimble appointed her "friend" Dennis Myers, ("Dennis") to be her POA. [Ex. 301.] He served in that capacity from that time forward until his resignation. Adult Protective Services ("APS") opened a file on Janette Kimble on March 15, 2017, shortly after she was discharged from the hospital. [Pasquale Fontana Testimony, Tr. 625:15-628:1;¹ Sealed Ex. 237 at SAB-006435.] That report states that an unnamed "source" reported to APS that Kimble "was seen by a psych while in the hospital. The psychiatrist does not feel client is able to live alone safely any longer due to cognitive impairment" The source also reported that Kimble "is not able to make safe decisions" The source had access to the medical records of Kimble as those records were extensively cited to APS and listed in the APS report. [Sealed Ex. 237 at SAB-0006437.]

When APS met with Janette Kimble in her home on March 17, 2017, she was clean and wearing clean clothes, her home was clean and well organized, she had access to food and water in the home and could complete all ADLs. She was waiting to be joined by friends to go out for their weekly dinner together. There was no evidence of abuse. The case worker found that her "home was well organized and

¹ Denotes transcript page and line.

clean/neat. The client has access to food and water in the home and could complete all ADLs." She also had access to transportation. It is of note that she refused to share information regarding her bank account or income. [Id. at SAB-0006438.]

Ms. Kimble reported that she taught classes on painting twice a week, had Dennis (her POA) help with pruning her trees recently, and still painted art for customers. Multiple paintings were noted in her home. She reported that she spends time with Dennis and Beth by playing cards, dinners, etc. She stated that Dennis and his wife Beth had picked her up from the hospital and drove her home. [Sealed Ex. 237 at SAB-006438-9.]

She has a Ph.D. in psychology. Notably, she shared that she had extensive familiarity with Fellowship Square. She had worked there for eight years teaching dancing and directing plays for the residents. [Id. at SAB-006439.] When confronted with the information given by the "source," she denied those allegations and stated she had "spoken to the lady in the room." That unidentified lady was likely the "source." The information given by the source appears to be wildly off-base. When confronted with the claim of the "source" who claimed she wasn't taking her medications, she said, "What?!? I only take one medication and a vitamin. I have no other medication." The APS officer then called Dr. Alemi, M.D. who opined "that the client is not vulnerable when it comes to abuse/exploitation" [Id. at SBA-006440.] No fear or filth were reported.

The changing story of the Sabatinas.

How the Sabatinas inserted themselves into the life of Kimble is unclear. In one story related by the Sabatinas, Kimble contacted Nicole to ask about being her “trustee.” Nicole Sabatina emailed Karen Cooley Esq., at 9:16 a.m. on Monday, March 20, 2017, and wrote to her she had received a call from Jean[n]ette Kimble telling her that she was the *trustee* for Ms. Kimble. Nicole told her she was “set” to see Kimble the *following* day. [Ex. 239.]

Why the story of Nicole would change so often was left unexplained and it was not credible. Notably, Ms. Cooley responded that Kimble had called her on Sunday, the day prior. [Id.] With the changes in the story from Nicole, it is plausible, but speculative, that Nicole saw Kimble on Sunday and had her call Cooley.

This first story went through significant change when Nicole informed CLD that it was on Tuesday, March 21, 2017, at 10:30 a.m. that she “received a frantic phone call from Ms. Kimble who indicated she was in need of my help and it was an emergency and that I was her *POA*.” [Ex. 240 at SAB-006457.] Nicole stated she saw Kimble the *same* day she called. She assured CLD, “Later that day, I travelled to Janette’s home” [Id.] She stated that on the same day as the call, Tuesday, March 21, 2017, was the day she went to see her. This varies greatly from the story

in the email related to Ms. Cooley. Nicole claimed that Kimble “did not remember that she had called me nor did she know who I was.” [Id.]

The certified billing statement which Nicole would present to the court does not reveal two things: 1) Who it was that requested of Nicole that she visit Kimble. The billing statement states, “Travel to Janette’s home for an initial visit with her *as requested.*” (Emphasis added). [Ex. 250 at SAB-006498.] 2) The statement does not report the information mentioned above, that she would later share with CLD that Kimble “did not remember that she had called me nor did she know who I was.”

The story changed again on April 12, 2017. Nicole “explained” to Kimble the role of the Sabatinas in her life as *licensed fiduciaries*. [Ex. 250. SAB-006507.] This was intentionally done to mislead Kimble into believing the Sabatinas were in a special position of trust and confidence to her. That they told her they were the licensed fiduciaries is established by what Nicole that same day told APS. Nicole called Adult Protective Services asserting an authority she did not possess. She informed them that “she was the *licensed fiduciary*” and had been “*assigned*” to the client,” [Ex. 237 at SAB-006441.] There is no evidence that any court ever assigned Nicole or Jeannean to Kimble. On that same day, Nicole called the POA and “Explained the role of *WZJ* with Janette.” [Ex. 250 at SAB-006506.]

Jeannean also misrepresented who she was and shifted her role as needed. When Jeannean met with Kimble the first time she introduced herself as her *geriatric*

care manager who was going to “help Janette Kimble” obtain the medications and follow-up medical visits she needed. The evidence proves a different plan was in place. [Jeannean Sabatina Testimony, Confidential Tr. 834:9-21; Ex. 250 at SAB-006459.] When Jeannean took Kimble to Dr. Sodhi, she told him that she was “*her social worker.*” [Id. at SAB-006501 & Sealed Record at SAB-010455.]

The purpose behind the plan.

Regardless of the date that Nicole first met with Kimble, Nicole revealed a part of her purpose when she made a call to Cooley “updating her on my visit” with Kimble. She stated to Cooley her “concerns relating to her confusion and the ability to amend her documents.” (Emphasis added.) The documents she was referring to are the documents that empowered Dennis Meyers to act on behalf of Kimble as her “agent for healthcare and financial” [Ex. 250 at SAB-006498.] They wanted control of the person and assets of Kimble. Much of the record that follows proves their taking control with no authority outside their improper use of licensure. The record raises the question, why Kimble, and why did Nicole visit her? The answer is likely stated in that same billing entry for March 21, 2017. [Ex. 250 at SAB-006498.]

There, the Sabatinas reported to the court in its billing that Nicole had the medical records of Kimble with her when she first visited Kimble. She certified to the court that she “[d]iscussed at length with her the observations of Boswell

Hospital, and the referral to a psychiatrist.” [Id.] It is far more likely that a source, someone with inside information regarding Kimble’s hospitalization, contacted the Sabatinas. It is even possible that the lady who spoke to Kimble at the hospital was one of the Sabatinas. This is consistent with the APS records which first record a report from a “source” that quotes from the health records of Kimble. [Ex. 237 at SAB-006437.] Jeanean would later state that Kimble gave the records to Nicole at that first visit. But that is not what the billing statement states.

If the statement of Nicole is to be believed, then having been told by Kimble that she did not know her or recall making a call to her, Kimble immediately reported her concern to this stranger about “her friend” Dennis ,who three days earlier, she had reported to APS her strong relationship with. The claim of Nicole that Kimble “offered her 50% interest in her will” is not credible and contradicts the other exhibits. [Ex. 250 at SAB-006498.] The billing record is remarkably contradictory with the reliable visit notes of APS of March 17, 2017. The story written by the Sabatinas is not credible. [Ex. 237 at SAB-006438.]²

The Sabatinas claim Kimble could not remember that she called Nicole earlier that day or who she was. Yet, according to APS, Kimble could inform them three days earlier that the name of the doctor she had seen was Dr. Nedda Aleemi, MD. [Id.] She also remembered his phone number and address which she gave to them.

² By example, three days earlier she would not discuss her finances with the APS officer.

Equally contradictory is that Kimble reported to APS that she had pruned trees with the assistance "of her friend Den[n]is." She also reported that she "spends time with Dennis and Beth by playing cards, dinners, etc." [Ex. 237 at SAB-006438.] Yet Nicole reports that Kimble "immediately" reported her concerns to Nicole about him.

It is of note that Nicole interjected to Kimble her own "concern with Dennis accepting money for jobs performed for her." [Ex. 250 at SAB-006498.] Yet, there is no record of any agreement by or warning being given to Kimble that the first visit by Nicole would result in Nicole immediately *charging* \$175.00 for that first encounter. It is not credible that Kimble asked Nicole or anyone else to "protect her" as claimed by Nicole. [Id.] It is clear from the billing record that Nicole decided that first day to file for guardianship and conservatorship.

Nicole invites her mother to bill for further services.

Regardless of how or why Nicole appeared at the Kimble home, when she left she charged her for calling and talking to her mother. [Ex. 250. SAB-006498.] The next morning the two were considering applying for conservatorship and guardianship. [Id.]

When Jeannean was asked in the hearing if she visited Kimble "to determine whether she (Kimble) needed your assistance" she answered, "No." [Jeannean Testimony Tr. 77:8-12 & Tr. 989:2-10.] Yet on March 21, 2017, Jeannean Sabatina

in her first visit with Kimble introduced herself as a *geriatric care manager* who was going to “help Janette Kimble” obtain the medications and follow-up medical visits she needed. The evidence proves a different plan was in place. [Jeannean Sabatina testimony, Confidential Tr. 834:9-21; Ex. 250, Bates SAB-006459.]

On or about the next day after Nicole Sabatina first met Janette Kimble, the conflict between their belief that she needed a conservator and a guardian, and yet had the capacity to sign a power of attorney, is a distortion of reality. Jeannean Sabatina, as geriatric manager analyzed and concluded that the same person who had the capacity to sign the power of attorney, lacked the capacity to be in any less restrictive facility than a memory care facility. Two doctors disagreed with that assessment. Any non-profit seeking individual would have paused. There was no pause. There was a sprint to gain control before they could be stopped.

Nicole reports she was also at Jeannean’s first meeting with Kimble. It is curious that Nicole would write that through her discussion with Kimble she “[o]btained a general history of her recent hospital stay.” [Ex. 250 at SAB-006499.] Yet in her first visit she billed her for discussing at length with her “the observations of Boswell Hospital and a referral to a psychiatrist.” [Id. at SAB-006498.]

That Nicole had Kimble medical records is apparent. Jeannean stated at her first visit that Nicole remembered from those records that Kimble had “a whole *list*

of medications” she was to take according to those medical records. [Id. at SAB-006499.]

But Kimble, who they claimed needed their help, stated she was only taking one medication. This was later proven to be true, despite the Sabatina otherwise claims. She was taking one medication for her thyroid, a baby aspirin, and vitamins. This is demonstrated by the Jeannean traveling to CVS to buy baby aspirins for her and delivering them to her at a cost of \$112.50 on March 24, 2017. [Id.]

The logic behind the prohibition of a conflict of interest in the ACJA is apparent in this second visit. There, Nicole “*confirmed* that Jeannean would obtain records from Banner Boswell” (emphasis added) and “follow up with her after receipt of those records.” [Id. at SAB-006498.] Jeannean testified it was at one of the early meetings that she had Kimble sign a medical records release. [Jeannean Sabatina Testimony, Confidential Tr. 836:2-7.] The billing record reflects it was the first meeting and that the “consent” was confirmed by Nicole.

It is contradictory that Kimble, the same person who couldn’t remember calling Nicole in the meeting two days earlier and who Nicole wrote in the billing record was “vulnerable” and had a “level of confusion” requiring a guardianship and conservatorship, was found competent according to Jeannean. [Jeannean Sabatina Testimony, Tr. 988:12-21 & Ex. 250 at SAB-006499.] In the first two days, the Sabatinas charged Kimble \$587.50. [Ex. 250, *supra*]

The unfettered use of licensure.

The stated concern of Nicole was that Meyers was "accepting money for jobs performed for her." [Id. SAB-006498.] The alternative offered by the Sabatinas, who found Kimble was not competent and needed a guardian and conservator, warrants consideration. The Sabatinas were demanding "money for jobs performed for her." The cost in the first two days was already \$587.50. Both the Sabatinas knew this. At this point they did not know her income or financial wherewithal. Nicole had no authority as an alternate power of attorney. Jeanneen had no authority as a geriatric case manager. The only authority they had was their unfettered use of their claim of the implicit power of their licensure. They knew Kimble was vulnerable. That they also wanted explicit control is also apparent by the next step they would take. That step would make the Sabatinas more money and cost them nothing because they would charge it to Kimble. The next step was hiring the attorney Nicole worked for as a 1099 employee.

On March 24, 2017, the Sabatinas conferenced with Matt Gobbato of Mushkatel Robbins & Becker ("MRB") where Nicole worked as a 1099 contract employee. He started drafting guardianship and conservatorship papers. [Id.] While in the billing records the Sabatinas state they were only considering a guardianship/conservatorship on March 22, 2017, the billing reveals another inconsistency.

On the day before, March 23, 2017, the billing record states Nicole called Gobbato, "updating him on our visit with Janette, and requesting that we move forward with a Guardian Conservatorship after *Dr. Bell* does her assessment." (Emphasis added.) [Id.] Two things become apparent. First, they were determined to move forward with a guardianship/conservatorship with nothing but their own assessment. They were hurrying to get to a conservatorship/guardianship because they had already consulted with an attorney twice. Third, they were proceeding with a doctor of their choice and fourth, they were proceeding with no effort to determine who the family members were. They were also working against, not with the POA or Kimble's family.

Undermining and removing the POA.

The evidence proves that the Sabatinas knew from the beginning that Kimble had an "agent for healthcare and financial in place." As cited above, his name was Dennis Meyers. The evidence proves that they constantly undermined him to take control. In her first encounter with Kimble, Nicole immediately undermined Kimble's POA, by expressing to Kimble her "concern with Dennis accepting money for jobs performed for her, and my concern of Dennis being the sole beneficiary of her Will." [Ex. 250 at SAB-006498.]

The testimony by the Sabatinas that Kimble expressed concern regarding him or wanted him replaced is contradicted by credible evidence. This begins with the

APS records that are dated shortly before Nicole's first encounter with Kimble. That APS officer reported that Kimble stated that she "spends time with Dennis and Beth by playing cards, dinners, etc." [Ex. 237 at SAB-006438.] When Jeannean saw Kimble on March 24, 2017, she reported when she arrived that she witnessed exactly what Kimble had told the APS officer. She saw Janette Kimble playing cards with Dennis Meyers and another friend. [Ex. 250, at SAB-006499.]

This should have brought a pause with reflection of their pursuit. That it did the opposite is strong evidence of an intentional disregard of the ACJA requirements. Rather than appreciate the involvement of the POA, that same date Nicole met with the attorney Gobbato complaining about what she saw as interference the POA. [Id. at SAB-006499.]

Bonnie Lazzell is the niece of Kimble. She knows Dennis Meyers as a family friend and in particular a friend of Kimble. She is also a registered nurse with a bachelor's degree and a director of a home health agency for the last 13 years. She has been a nurse case manager at a hospital, overseen ICU, med/surge, OB, and pediatrics in the past and been a surgical nurse. [Bonnie Lazzell, Tr. 284:6-13, 285:3-5; 311:23-25.] She testified that in her discussions with Kimble that Kimble "never ever" indicated a fear of Dennis. [Id. at 306:3-8.]

On March 28, 2017, Nicole repeatedly showed to Kimble the documents that kept Meyers as agent for healthcare and financial. This was done to anger Kimble. [Ex. 250 at SAB-006501.]

With no authority, Nicole went to Bank of America and Chase Bank to determine the monies in Kimble's account. The Chase account had been closed for four years. Whether true or not, while at the Bank of America Nicole claims that the bank officer "indicated their concern for Janette and her male friend for quite some time." Asserting her claimed authority, Nicole "confirmed our involvement" as licensed fiduciaries and intentionally undermined the POA by suggesting he was involved in criminal conduct by asking "that her account be flagged for fraud should she come in again with *him*." [Id. at SAB-006502-3.]

Jeannean reports that Nicole called her and told her that Kimble and Meyers were coming into the Chase Bank "almost daily" with Meyers "doing all the talking." Jeannean reported that Nicole told her that she had informed the bank officer as well of the fraud concern regarding Meyers. [Id. at SAB-006503.]

On March 28, 2017, Nicole stated "I am very concerned with Janette remaining in her home alone and her ability to care for her new puppy. The home continues to smell of dog urine and is very disheveled." Yet when the POA helped Kimble this concern vanished.

On April 10, 2017, the Sabatinas learned that Meyers was helping Kimble get a dog. [Id. at SAB-006505.] This resulted in the Sabatinas striving to find a dog POA and having seven meetings to look for a dog for Kimble before Meyers did. The Sabatinas charged Kimble \$178.00 to find a dog before the POA. [Id. at SAB-006505-6.] *One month later, on May 12, 2017, the Sabatinas had Kimble's dog killed.* [Id. at SAB-006496.]

On April 12, 2017, Nicole called Meyers to get him to resign as POA. Instead, Meyers told Kimble the truth, that the Sabatinas intended to put her in a nursing home. That day, Nicole called APS to complain about Meyers by undermining his authority. Nicole claimed to APS that “she was the licensed fiduciary that has been assigned with the client.” [Ex. 237 at SAB-006441.]

The POA confronted the Sabatinas about what they were doing with Kimble. The Sabatinas had the locks to her house changed to keep him out. When a “defensive” neighbor confronted the Sabatinas, Nicole “at length” made sure a negative picture was painted of Meyers. [Id. at SAB-006508.] This apparent fear of the intervention of the POA led to the flagrant overcharging of Kimble to the Sabatinas’ benefit, not Kimble’s.

The Sabatinas’ view and fear of an outside attorney being called in is apparent by Jeannean’s description of Nicole as being “frantic” when Nicole called Jeannean to tell her that Meyers had taken Kimble to an attorney. [Id. at SAB-006507.] But

Kimble and Meyers went to the law firm of *Mushkatel Robbins & Becker* ("MRB") to demand Nicole Sabatina be removed as the alternate POA. They were told to wait in the lobby. Meanwhile MRB called the Sabatins. [Id.] Jeannean was present for the medical evaluation by Dr. Sodhi. She had told Nicole that he had found Kimble competent to name her POA. [Id. at SAB-006501 & Sealed Record, SAB-010455.] Yet to undermine the POA, Nicole told MRB that two other doctors had evaluated Kimble and stated she was not competent to change her documents. [Id. at SAB-006507.] This was untrue and had no other purpose than to undermine Meyers to MRB.

The Sabatins reviewed records to determine how to threaten Meyers to force him to resign. They determined that the Boswell Hospital records "indicated" that "Dennis posed as her adopted son." [Id. at SAB-006508.] They then threatening him with illegal behavior." [Bonnie Lazzell Testimony, Tr. 2862-5.]

The continuing timeline.

The concern Nicole reported to their attorney Gobbato regarding the POA apparently led Jeannean to see Kimble. She billed for going to CVS and buying 81g aspirin, rather than first go to Kimble's home and obtain the prescription for the one medication Kimble had and obtain both. Jeannean saw Kimble and the POA playing cards with a friend. In delivering the aspirin, Jeannean told Kimble she was taking her to see Dr. Sodhi on Monday, March 27, 2017. She said she would also get her

prescriptions filled. The billing records state that CVS was closed. [Id.] This visit was charged at \$112.50.

After the POA left, Jeannean returned to see Kimble. She again reviewed her medications with her. Earlier she had told Kimble she was taking her to a psychiatrist on Monday, March 27, 2017. In this second meeting on the same day she informed Kimble again that she needed to see her psychiatrist. But this time stated that she had to schedule the appointment.

As cited above, the billing record states she already bought 81mg aspirin and delivered them. However, the billing record states she told Kimble she would set up an appointment with the psychiatrist and "purchase her 81 mg aspirin" and "deliver her aspirin." The charge for this repetitive second visit was \$200.00 [Id.]

Jeannean then telephoned Nicole and told her of Kimble's appointment with the psychiatrist at a cost to Kimble of \$25. Jeannean then had a conference with Nicole in which she told her again of the psychiatrist appointment at a cost of \$12.50. Jeannean then called Dr. Sodhi to confirm the appointment at a cost of \$12.50. Jeannean then called Kimble and told her for the third time the same day and time of the appointment was confirmed at a cost of \$12.50. [Id. at SAB006500.] The cost to Kimble for the delivery of the aspirin and the multiple confirmations of the doctor's appointment was \$375.00.

Adding With Love Jeannean LLC ("WLJ").

Despite the clear vulnerability of Kimble, as claimed by the Sabatinas, and no record of Kimble's or the POA's concurrence with their being hired, Jeannean called her office and gave directions which included that Kimble be made a "new client" of WLJ. [Id.] The cost for this was another \$34.00. The total billing for March 24, 2017, including these repetitive meetings and confirmations was nearly \$900.00.

Regarding these medications, Jeannean was asked if the steps she had taken with Kimble included managing her medication. She answered, "I didn't manage- she would basically have a baby aspirin and all vitamins." The medication she was taking was her thyroid, and she kept it in here. She wouldn't let anyone touch it." [Jeannean Sabatina Testimony, 77:17-21.] The multiple contradictions denote ill intent.

On Monday, March 27, 2017, Nicole met with her mother to get an update of the appointment that would take place later that day with the psychiatrist. Nicole reported to her mother that *"I would see Janette tomorrow to speak with her regarding the assets she has."* Meanwhile, Jeannean on that same date reported she had reviewed the medical records again and that they confirmed that Kimble "should not be making medical or financial decisions." [Ex. 250 at SAB-006501.]

Using subterfuge, Jeannean went into the examination of Kimble with Dr. Sodhi. She told Dr. Sodhi that she was "her social worker." This enabled Jeannean

to document into her records a summation of the visit. [Id. at SAB-006501 & Sealed Record at SAB-010455.] The Sabatinas already knew that Kimble was not competent to make financial decisions. Later that same day, Jeannean would tell Nicole again that Kimble was found not competent to make financial decisions based on the Dr. Sodhi examination. However, Dr. Sodhi found Kimble was competent to choose her POA. [Ex. 250, *supra*.]

For a conservatorship, the law requires the petitioner to state a reason *why* the appointment of a conservator is necessary. [A.R.S. § 14-5404(B)(7).] This finding removed the possibility that Kimble was not competent to name the POA she had and the Sabatinas would have to prove why the conservator was needed when there was a POA.

Having been twice told that Kimble was not competent to make financial decisions and without authority, Nicole gleaned from the vulnerable Kimble her financial information anyway. The following morning Nicole went to Kimble and “reviewed her financial with her.” [Ex. 250 at SAB-006501.] Through these billing records, the Sabatinas repeatedly showed the document of Meyers as the POA repeatedly to Kimble and blame-shifted to him. Nicole reported that Kimble “indicated several times that she did not trust her friend Dennis and became very angry when she saw her documents that she signed naming him as her agent.” [Id.]

Absent from these records is any report that the Kimble ever contracted with the Sabatinas or were informed of the amount they were charging or that they immediately had determined to control her assets and become her guardian to enable them to isolate her from her friend Dennis, her neighbors, and soon her family.

Dr. Sodhi's April 11, 2017 report entitled "Guidelines for Health Professionals Report," indicates that a group home or supervisory care facility were the appropriate living settings for Janette Kimble. [Jeannean Sabatina, Tr. 93:1-94:17; Sealed Ex. 256 at SAB-006628-29.] Dr. Sodhi's report does not indicate that a memory care facility was the appropriate environment for Janette Kimble. [Jeannean Sabatina Testimony, Tr. 94:18-95-12; Sealed Ex. 256.] Dr. Sodhi's report indicated that the least restrictive living arrangement for Janette Kimble was at home with a caregiver. [Jeannean Sabatina Testimony, Tr. 95:3-10; Sealed Ex. 256 at SAB-006629.]

Unsatisfied with the report of Dr. Sodhi, Nicole billed Kimble for writing to APS on March 28, 2017. Jeannean on that that date scheduled Kimble to be assessed by Dr. Bell. The only person who says Kimble agreed to see Dr. Bell is Jeannean. [Id. at SAB0006502 & Jeannean Testimony, Tr. 83:10-13.] The APS record reflects that a case worker called Dr. Alemi and disagreed with the Sabatinas' claimed need for APS, and that worker sought the medical records, which Nicole could have sent to APS if her concern was genuine but did not. [Ex. 237 at SAB006440.]

Despite the multiple times being informed Kimble was not competent to make financial decisions, Nicole on March 29, 2017, went to the Bank of America and obtained the financial records of Kimble. Her only authority was her use of her fiduciary license. She had no court authority. She was not the POA. Any use of her alternate status as POA would have been a fraud on the bank and Kimble. [Ex. 250 at SAB-0006502-3.] Nicole then went the next day to Chase bank to obtain further financial information about Kimble. [Id. at SAB-006503.]

On that same date, March 29, 2017, the Sabatinas directed MRB, the firm where Nicole was a 1099 employee, to continue with the drafting of a petition for Jeannean Sabatina and Nicole Sabatina to be appointed as the guardian and conservator for Janette Kimble. [Jeannean Sabatina Testimony, Tr. 86:1-20; Ex. 250 at SAB-006503.] This reflects their confidence that Dr. Bell would make the finding they wanted. They learned Bell no longer did such reports.

They reported that they learned the POA for Kimble was going to the bank with Kimble. There is no evidence this judge was pointed to that the POA did anything improper in those visits. Yet, the Sabatinas further undermined the POA by telling the bank that they had the authority, apparently through their fiduciary licensure, to have the account flagged and be informed if the POA came back to the bank with Kimble. [Id.] They called Dr. Sodhi's office to speed up the report they

hoped would enable them to file the guardianship. Rather than fax or email him another copy of the form, they drove one to his office and billed Kimble. [Id.]

When the Sabatinas learned on April 4, 2017 that Kimble was considering going to her high school class reunion, Jeannean ordered "that no way is Janette leaving this state." [Id. at SAB-006504.] There was no authority for such an order except through the claimed power of her fiduciary licensure. This continued a pattern of isolation that began by the undermining of her friend and POA.

Dr. Bell was unavailable to examine Kimble. Dr. Sodhi was not getting the report they wanted quickly enough to obtain their conservatorship. Their attorney Gobbato told them they needed the doctor's report to file for guardianship. As a result, Jeannean called the MRB attorney Gobbato. By April 10, 2017, they still did not have the medical record they needed, and they learned the POA was helping Kimble get a dog. [Id. at SAB-006505.] This resulted in the Sabatinas striving to find a dog POA and having seven meetings to look for a dog for her before the POA did. The cost was \$178.00 [Id. at SAB-006505-6.]

On April 12, 2017, the Sabatinas were no closer to obtaining control of Kimble and her assets. Nicole confronted the POA and explained she was the alternate and that WLJ should be in control. From that conversation the POA learned of the Sabatinas intentions to put Kimble in a nursing home with no freedoms. [Id. at SAB-006506.] He informed Kimble of their intentions. [Id.]

Jeannean described Nicole as “frantic” when Nicole called her and said that the POA had taken Kimble to an attorney. [Id. at SAB-006507.] There should have been no concern. The frantic call is further evidence of ill intent. However, the attorney the POA took Kimble to was MRB. That law firm made Kimble and the POA wait in the lobby. Meanwhile, the firm called the Sabatinas. [Id.] Nicole told MRB that two doctors had evaluated and stated that Kimble was not competent to change her documents. [Id.] This was untrue. The medical records reflect the opposite. The POA left and brought Kimble back home. [Id.]

Once Meyers left the house, the Sabatinas went to Kimble’s house and “*explained their role as licensed fiduciaries*” to Kimble. [Id.] When the POA returned and confronted them they responded by immediately changing the locks on Janette Kimble’s house to keep the POA out and further isolate her. They had Kimble pay for four keys for WLJ and one key for herself. The Sabatinas charged Kimble \$800.00 for their time while the locks were changed. [Ex. 250 at SAB-006507.] The cost of the locksmith was \$320.00. [Id. at SAB-006558.]

When a defensive neighbor questioned what they were doing, Jeannean wrote that Nicole met with her at length, “and when she left she saw a little different picture of Dennis and his relationship with Janette.” She then ordered Kimble not to answer the phone and talk to anyone except Jeannean. [Id. at SAB-006508.] Their claim that Kimble told them to change the locks is not credible because Kimble responded by

calling her brother and was upset with the Sabatinas. [Lazzell Testimony, Tr. 286:10-12.]

When they changed the locks, Jeannean Sabatina was not Janette Kimble's Power of Attorney and had not been appointed as Janette Kimble's guardian. [Jeannean Sabatina Testimony, Tr. 95:22-96:5.] Nicole Sabatina had not been appointed as the conservator of Janette Kimble's estate as of that date. [Jeannean Sabatina Testimony, Tr. 95:22-96:8.] The only authority they had was their licensure as fiduciaries.

Jeannean drove to Dr. Sodhi's office to further speed up his filing out the form to obtain the guardianship. The staff correctly pointed out she had no authority to obtain anything. She charged another \$75.00 to drive there anyway. [Ex. 250 at SAB-006507.] The following day, they would charge Kimble another \$75.00 regarding those same records. Kimble called the Sabatinas to tell them she wanted to meet with both of them regarding her future with them. [Id. at SAB-006508.] Kimble called her brother and was upset with the Sabatinas. [Lazzell Testimony, Tr. 286:10-12.]

On April 13, 2017, Jeannean wrote that the POA had created a "disaster" in telling Kimble what the Sabatinas had planned for Kimble and held an office conference to discuss it. Rather than calling Kimble, whom she had told not to answer the phone except on a signal from her, Jeannean traveled to Kimble's home

to schedule the meeting demanded by Kimble. But Kimble had already called her nieces out of her concerns regarding the Sabatinas including their changing the locks. Jeannean, upon meeting the family wrote, "I felt again as I was walking into the *enemy* camp." (Emphasis added.) [Id. at SAB-006509.]

Her choice of phraseology of "enemy" establishes that had this continuously been her view. The descriptive term coupled with the term "again" evidences her view of the POA, the family of Kimble, and anyone who opposed the Sabatinas' taking control of Kimble. It is summarized by her self-proclaimed achievement of "progress" with Kimble and her propensity for dramatical exaggerations. She stated, "*All of the progress I had made with Janette was gone including her taking her medications.*" [Id.]

Janette Kimble and her niece, Laura [Taylor], visited Fellowship Square on April 13, 2017 because Janette Kimble wanted to move there. [Jean Martin Testimony, Tr. 692:3-24.] While at Fellowship Square on April 13, 2017, Janette Kimble and Laura Taylor met with Fellowship Square's move-in coordinator, Jean Martin. [Id. at Tr. 692:3-18.]

Fellowship Square is a retirement community for seniors that provides a continuum of care from independent living with optional supportive services, assisted living, skilled nursing care, and memory care. [Id. at Tr. 691:7-692:2; 706:1-

10; Ex. 258 at SAB-006654, 00661-00662, 00669, 006671-72.] That was the choice of Kimble and her family.

Janette Kimble filled out her application for residency at Fellowship Square on April 13, 2017. [Id. at Tr. 692:25-693:3.] She appeared to understand the contract she signed for renting an apartment at Fellowship Square and her responsibilities as a resident. [Id. at Tr. 722:6-11.] Janette Kimble initially intended to move into an apartment at Fellowship Square at the end of April 2017. [Id. at Tr. 693:4-6; Ex. 254 at SAB-006578.]

However, she was frightened of the Sabatinas and how they had changed the locks to her home. Janette Kimble's nieces moved her into a temporary apartment at Fellowship Square on April 18, 2017 because she was fearful of caregivers [the Sabatinas] who had changed the locks on her home. [Jean Martin Testimony, Tr. 693:8-16; 696:17-697:5; Ex. 252 at SAB-006574-75, 006578; Sealed Ex. 256 at Bates SAB-006583; and Jeannean Sabatina Testimony, Tr. 91:8-20.] Janette Kimble stayed in her temporary apartment at Fellowship Square with Denina Geistlinger, Kimble described Denina to Jean Martin as her courtesy granddaughter. [Jean Martin Testimony at Tr. 705:3-10.]

Deceit and disregard and intentional non-compliance with the ACJA.

When Jean Martin discussed the appropriateness of Janette Kimble's living in the independent living portion of Fellowship Square with the Sabatinas on April 19,

2017, neither of the Sabatinas thought that the medication services or other additional services offered by Fellowship Square would be necessary for Janette Kimble. [Jean Martin Testimony, Tr. 698:3-10; 719:14-720:3; Sealed Ex. 256 at SAB-006585.]

This deceitful statement is further evidence of ill intent by the Sabatinas. The objective record shows that on the day before, April 18, 2017, Nicole told APS that she was filing guardianship papers that week and that she wanted to place Janette Kimble in a memory care facility. [Sealed Ex. 237 at SAB-006441.] That facility would be Rock Creek, a locked down Alzheimer's community. A physician's order is required for admission to a memory care facility, such as Rock Creek. Jeannean Sabatina Testimony, Tr. 99:14-19; Stephanie Fialkin Testimony, Tr. 778:15-20.]

The Physician Reports disregarded by the Sabatinas.

Dr. Sodhi. Dr. Sodhi's April 11, 2017 report entitled "Guidelines for Health Professionals Report," indicates that a group home or supervisory care facility were the appropriate living settings for Janette Kimble. [Jeannean Sabatina Testimony, Tr. 93:1-94:17; Sealed Ex. 256 at SAB-006628-29.] Dr. Sodhi's report does not indicate that a memory care facility was the appropriate environment for Janette Kimble. [Id. at Tr. 94:18-95-12; Sealed Ex. 256.]

Dr. Sodhi's report indicated that the least restrictive living arrangement for Janette Kimble was at home with a caregiver. [Jeannean Sabatina Testimony, Tr.

95:3-10; Sealed Ex. 256, Bates SAB-006629.] Jeannean Sabatina was not Janette Kimble's Power of Attorney and had not been appointed as Janette Kimble's guardian as of April 19, 2017. [Jeannean Sabatina Testimony, Tr. 95:22-96:5.] Nicole Sabatina had not been appointed as the conservator of Janette Kimble's estate as of April 19, 2017. [Id. at Tr. 95:22-96:8.]

Dr. Alemi. On April 20, 2017, Jeannean Sabatina asked Janette Kimble's primary care physician to complete admission papers for memory care. [Id. at Tr. 993:5-994:16; Ex. 250 at SAB-006516.] Dr. Alemi, Janette Kimble's primary care physician, *denied* Jeannean Sabatina's request that she sign admission orders to place Janette Kimble in memory care. [Jeannean Sabatina Testimony, Tr. 100:2-13; Ex. 250 at SAB-006517.]

As of April 20, 2017, no physician order had been issued for Janette Kimble to be placed in a memory care facility. [Id. at Tr. 99:4-22.] Even though no physician order had been issued for Janette Kimble to be placed in memory care, Jeannean Sabatina was trying to find a memory care facility in which to place Janette Kimble. [Id. at Tr. 99:14-100:1.]

The Sabatinas resort to creative thinking rather than physician's authority.

After failing to obtain memory care admission orders from Dr. Alemi, Jeannean Sabatina posted this entry in the WLJ billing records on April 20, 2017: *"Updated Nicole on the physician's refusal to accommodate any request that we may*

have. We are no closer to getting Janette into memory care. Confirmed with Nicole my meeting with Kari on Friday. We may be able to do some creative thinking." The purpose of the "creative thinking" was to get Janette Kimble into the Rock Creek memory care facility. [Jeannean Sabatina Testimony, Tr. 101:2-14; Ex. 250 at SAB-006517.] Jeannean and Nicole Sabatina decided to move Janette Kimble to Rock Creek. [Jeannean Sabatina Testimony, Confidential Tr. 859:5-7.]

Rock Creek is a 66-bed standalone Alzheimer's community. [Kari Robinson Testimony, Tr. 564:8-10. It is a locked facility. [Stephanie Fialkin Testimony, Tr. 777:14-18.] The residents of Rock Creek are not free to leave the facility on their own. [Kari Robinson Testimony, Tr. 565:6-17.]

Jean Martin had informed Nicole Sabatina that Denine Geistlinger had been staying with Janette Kimble in the temporary apartment, but Nicole Sabatina said that was not enough and wanted a caregiver to stay with Janette Kimble. [Jean Martin Testimony, Confidential Tr. 705:11-18.] Janette Kimble was afraid to let the caregiver sent by Nicole Sabatina into her apartment at Fellowship Square. [Jean Martin Testimony, Confidential Tr. 709:11-19; 710:17-19; Ex. 255 at SAB-006580.]

The Sabatinas use of a guard to prevent family contact.

The Sabatinas stationed WLJ's caregiver to stand outside Janette Kimble's door at Fellowship Square until she moved to Rock Creek. [Bonnie Lazzell Testimony, Tr. 288:8-20.] In her 18 years in the industry, Jean Martin had never seen

a situation in which a caregiver was stationed outside a resident's door. [Jean Martin Testimony, Tr. 720:9-721:25.]

Jean Martin informed Nicole Sabatina that Fellowship Square offered higher levels of care than independent living if the need should arise and provided her with Fellowship Square's brochure indicating Fellowship Square offered assisted living and memory care services, and medication management services. [Id. at Tr. 706:11-709:9; Ex. 253 at SAB-006654, 006660, 006669-71.]

The screaming hostility of the Sabatinas.

On April 20, 2017, Bonnie Lazzell, Janette Kimble's niece, flew from Danville, Illinois to Phoenix, Arizona at her father's (Janette Kimble's brother) request to find out what was happening with Janette Kimble in relation to the Sabatinas. [Bonnie Lazzell Testimony, Tr. 283:25-286:15.]

Bonnie Lazzell first met Nicole Sabatina on April 21, 2017 at Fellowship Square, when Nicole was banging on Janette Kimble's apartment door, yelling for someone to open the door, and telling Bonnie Lazzell that the family needed to stay out of the situation between the Sabatinas and Janette Kimble. [Id. at Tr. 285:12-287:25.] Based on the aggressive behavior Nicole Sabatina was displaying and her screaming, Bonnie Lazzell became frightened and videotaped part of their conversation (through the door) on her cell phone. [Id. at Tr. 288:1-6, 306:19-308:5, and Ex. 262 (media file).] She was frightened by the screaming of Nicole. The

recording of the screaming by Nicole Sabatina is shockingly hostile, unprofessional, inexcusable, and offset by the remarkably quiet and professional demeanor of Lazzell.

Not surprisingly, Janette Kimble was frightened by Nicole Sabatina's banging on the door and yelling. [Id. at Tr. 288:25-290:7. In her frightened state, she ran out of the side door of the apartment. [Id. at Tr. 288:25-290:12; Jean Martin Testimony, Confidential Tr. 710:20-711:12.] Prior to the incident on April 21, 2017, Janette Kimble had done nothing like that during her stay at Fellowship Square. [Jean Martin Testimony, Confidential Tr. 711:13-16.]

Bonnie Lazzell and Laura Taylor offered to take Janette Kimble to Rock Creek, which Bonnie Lazzell thought was an assisted living facility, because Janette Kimble was upset [from Nicole banging on the door and screaming] and they wanted to calm her down. [Bonnie Lazzell Testimony, Tr. 290:17-291:4.] Prior to the Sabatinas' removal of Janette Kimble from Fellowship Square on April 21, 2017, Kimble had followed all rules and displayed no objectionable behavior. [Jean Martin Testimony, Tr. 722:20-723:2.]

Janette Kimble became a resident of Rock Creek. [Kari Robinson Testimony, Tr. 566:16-20.]

Janette Kimble's nieces did not agree that Janette Kimble should be placed at Rock Creek and the Sabatinas intentionally disregarded their wishes and Kimble's.

[Jeannean Sabatina Testimony, Tr. 105:17-23.] As a licensed nurse, it was Bonnie Lazzell's opinion that it was not medically necessary for Janette Kimble to be placed at Rock Creek. [Bonnie Lazzell Testimony, Tr. 327:16-23.] She felt that Kimble had a mental capacity higher than the residents at Rock Creek. [Id. at Tr. 292:11-293:3; 318:10-22.] As of April 21, 2017, Jeannean Sabatina had not been appointed guardian of Janette Kimble. [Jeannean Sabatina Testimony, Tr. 105:24-106:2.]

The intentional disregard of the medical requirement for admission.

Prior to moving Janette Kimble into Rock Creek, Jeannean Sabatina engaged Rock Creek's "in-house" physician, Dr. Mohindra, to follow Janette Kimble's care upon admission. [Id. at Tr. 106:6-24; Ex. 250 at SAB-006522.]

Her testimony is impeached by her own WLJ billing records. Those records are accurate and state that Melissa Hoover, Dr. Mohindra's Physician's Assistant, had signed Janette Kimble's memory care admission papers before assessing her in person. [Ex. 250 at SAB-006522.]

When asked about the billing entry, Jeannean Sabatina impeached her own prior statement in the billing records. She testified that Melissa Hoover signed the physician's order recommending Janette Kimble for memory care placement after evaluating Janette Kimble when she arrived for move-in at Rock Creek. [Jeannean Sabatina Testimony, Tr. 107:20-108:2.] Her testimony is not credible. Jeannean Sabatina had met with Melissa Hoover to provide her background information on

Janette Kimble, *prior* to Melissa Hoover's evaluation of Janette Kimble. [Id. at Tr. 108:3-6; Ex. 250 at SAB-006522.] This was done to slant the evaluation.

Using intentional isolation and further deceit.

Visitation and contact restrictions were put into place once Janette Kimble was admitted to Rock Creek by the Sabatinas. [Id. at Tr. 108:12-15; Ex. 250 at SAB-006523.]

The Sabatinas denied placing any visitation or communications restrictions on Janette Kimble's family and friends while she was in Rock Creek and claimed any restrictions put in place resulted from Rock Creek protocols and policies. [Pasquale Fontana Testimony, Tr. 620:12-621:1; Ex. 356 at SAB-010533-4.]

In their written response to the Director Initiated Complaint, the Sabatinas represented that the visitation and communication restrictions on Janette Kimble's family and friends were put in place by Rock Creek staff in conjunction with Rock Creek's policy. [Ex. 300 at SAB-008514; Jeannean Sabatina Testimony, Tr. 999:4-1001:11.]

Stephanie Fialkin is the executive director of Rock Creek. She was on maternity leave when Janette Kimble was admitted to and resided at Rock Creek. She testified that Rock Creek has no visitation restriction policy regarding its residents. [Stephanie Fialkin Testimony, Tr. 779:2-13; 789:18-23; 791:23-25.]

CLD's investigation also revealed that the Sabatinas' claim that visitation and communications restrictions were put in place by Rock Creek was false and that they were placed by the Sabatinas. [Pasquale Fontana Testimony, Tr. 621:2-24; Ex. 356, at SAB-010529-35; Kari Robinson Testimony, Confidential Tr. 574:21-576:1.]

The hostile use of laughter toward the "enemy camp."

Jeannean reported that upon meeting the family stated she felt like "I was walking into the *enemy camp*." (Emphasis added.) [Id. at SAB-006509.] Nicole's response to the delivery of Kimble into a lock down facility where the Sabatinas had already instructed that the family would have no contact with Kimble is a telling example of the callous hostility of the Sabatinas to their "enemy." When Bonnie Lazzell and Laura Taylor took Janette Kimble to Rock Creek on April 21, 2017, Nicole came up behind them and began laughing and walked up to Jeannean who was waiting there. [Bonnie Lazzell Testimony, Tr. 291:19-24.]

It made no difference to the Sabatinas that Kimble was petrified and in shock. There was no Rock Creek policy that prohibited visitation upon entry nor did the staff tell them the "enemy camp" of the Sabatinas that. Rock Creek staff asked them to give Janette Kimble a day or two to adjust and then informed them they could visit for an hour. [Id. at Tr. 293:12-294:14.]

The intentional and complete isolation of Kimble by the Sabatinas.

Bonnie Lazzell and Laura Taylor visited Janette Kimble at Rock Creek on April 23, 2017. Shortly after their arrival, two Rock Creek staff members informed them that Nicole Sabatina, Ms. Kimble's power of attorney, said they were not allowed to be there and asked them to leave. Rock Creek staff members also informed them they could not come back, and one staff member escorted them out of the facility. [Id. at Tr. 294:15-296:9.]

On April 25, 2017, Al Richardson, Janette Kimble's nephew, filed an objection to the Sabatinas' petition for guardianship and conservatorship. [Ex. 227 at SAB-006380.]

When Rock Creek staff called Jeannean Sabatina to inform her that family members were there to visit Janette Kimble on April 26, 2017, Jeannean Sabatina contacted Nicole Sabatina to ask Rock Creek staff to tell them to leave. [Jeannean Sabatina Testimony, Tr. 112:16:114-24; Ex. 250 at SAB-006528.] Pursuant to Nicole Sabatina's request, Rock Creek staff asked Janette Kimble's family to terminate their visit and leave the facility. [Jeannean Sabatina Testimony, Tr. 114:8-11; Exhibit 250 at SAB-006528.]

Bonnie Lazzell was upset about the visitation restrictions because they prevented family members from providing comfort to Janette Kimble in her new

surroundings. She was also concerned that Janette Kimble might think her family and friends had abandoned her. [Bonnie Lazzell Testimony, Tr. 295:25-296:8.]

The Sabatinas are forced to partially end isolation.

Bonnie Lazzell flew to Phoenix on multiple occasions to assist Janette Kimble [with getting out of Rock Creek and prevent the Sabatinas from becoming her guardian and conservator]. [Id. at Tr. 296:10-297:20.] Until Janette Kimble's court appointed counsel became involved, no family members were allowed by the Sabatinas to visit Janette Kimble at Rock Creek. [Id. at Tr. 297:6-23.]

Nicole would not lift the visitation restrictions until Jeannean Sabatina asked her to, and finally allowed Bonnie Lazzell to visit Janette Kimble. But she told Nicole to place a permanent visitation restriction on Dennis Myers and his daughter Denina Geistlinger. [Jeannean Sabatina Testimony, Tr. 109:2-110:10; Ex. 250 at SAB-006523.]

Acting as Janette Kimble's power of attorney, Nicole Sabatina, placed permanent visitation restrictions on Dennis Myers and his daughter, Denina. [Id. at Tr. 110:16-111:2; Ex. 250 at SAB-006523.] The complete restriction on visitation and telephone calls from Dennis Myers and his daughter, Denina, were not imposed by Rock Creek. [Id. at Tr. 111:7-15.]

APS interviewed Kari Robinson at Rock Creek on May 3, 2017. Ms. Robinson informed the APS employee that Janette Kimble's visitation had been restricted until

the hearing for guardianship (which was then scheduled to take place on June 3, 2017). [Sealed Ex. 237 at SAB-006646.]

Kimble's speaks her mind to APS.

An APS employee spoke to Janette Kimble at Rock Creek on May 3, 2017. Janette Kimble informed the APS employee that her niece Bonnie was not allowed to speak to her, her friends Dennis and Beth were not allowed to visit her in the facility, she did not know why she was in the facility, she could not visit with others, use the telephone or write letters, and for the sentence she was asked to write in her mini mental examination, Ms. Kimble wrote "I want to go home." She informed the APS employee that she was upset about what had happened to her and would like some answers. [Sealed Ex. 237 at SAB-006646.]

The Kimble family doctor and a friend oppose the Sabatinas.

On May 4, 2017, Janette Kimble's long-time primary care physician, Dr. Alemi, informed APS that Janette Kimble was not physically or mentally vulnerable and was competent to make her own decisions. [Pasquale Fontana Testimony, Confidential Tr. 635:13-636:7; Sealed Ex. 237 at SAB-006447.]

On May 17, 2017, Janette Kimble's friend, Denina Geistlinger, and court appointed counsel filed separate objections to the Sabatinas' guardianship and conservatorship petition regarding Janette Kimble. [Jeannean Sabatina Testimony, Tr. 114:25-116:19; Ex. 225 at SAB-006376; Ex. 231 at SAB-006395.] As of May

25, 2017, when Nicole Sabatina lifted restrictions on family visits and calls to Janette Kimble at Rock Creek, but maintained the restrictions on Dennis Myers and his daughter, Denina, she was doing so as a FOA. [Jeannean Sabatina Testimony, Tr. 114:12-19; Ex. 250 at SAB-006524.]

The last effort to obtain the guardianship through further deceit.

Janette Kimble wanted to attend the June 20, 2017 hearing on the Sabatinas' petition for guardianship and conservatorship. [Id. at Tr. 118:14-23.] To stop her and obtain the guardianship/conservatorship, the Sabatinas did "creative thinking" again. They sought a medical opinion from Melissa Hoover, the physician assistant to Rock Creek's "in-house" physician whose order had improperly admitted Kimble into Rock Creek, that Janette Kimble should for medical reasons not be allowed to attend the June 20, 2017 court hearing to determine whether the Sabatinas should be appointed guardian and conservator for her.

They further sought, but did not receive, a letter from Melissa Hoover stating that Janette Kimble required admission to the Sage Unit at Banner Del Webb hospital, which is a Level 1 *psychiatric* inpatient program. [Id. at Tr. 119:3-124:4; Ex. 250 at SAB-006550-52.]

On June 19, 2017, Bonnie Lazzell and Laura Taylor learned from Janette Kimble's court appointed counsel that the Sabatinas were not going to let Janette Kimble attend the June 20, 2017 hearing. He also informed them that the Sabatinas

had no legitimate right to keep her at Rock Creek or to prevent them from taking her to the hearing. [Bonnie Lazzell Testimony, Tr. 298:22-299:23.]

The escape to court.

Janette Kimble was upset when she learned that she may not be able to attend the June 20, 2017 hearing. [Id. at Tr. 300:9-11.] Bonnie Lazzell and Laura Taylor told Janette Kimble that the Sabatinas had no legal right to keep her at Rock Creek and she could leave if that is what she wanted. As Bonnie Lazzell and Laura Taylor were leaving Rock Creek, Janette Kimble ran out the door of Rock Creek to Laura Taylor's car in the parking lot. [Id. at Tr. 300:24-302:5.]

Nicole Sabatina and Jeannean Sabatina, who were at Rock Creek, ran after Janette Kimble as she was running to Laura Taylor's car in a final attempt to keep her from the hearing. [Id. at Tr. 301:25-302:15.]

Several of Janette Kimble's family members, friends, and neighbors attended the June 20, 2017 hearing on the Sabatinas' guardianship and conservatorship petition to support Janette Kimble and in opposition to the Petition. [Jeannean Sabatina Testimony, Tr. 124:5-125:1; Bonnie Lazzell Testimony, Tr. 304:3-10; Ex. 234 (media file).]

The Court denied the Sabatinas' Petition for Guardianship and Conservatorship. [Jeannean Sabatina Testimony, Tr. 125:19-127:16; Ex. 222 at SAB-006362; Ex. 233 at SAB006431-32.]

All of Jeannean Sabatina's visits with Janette Kimble were as a geriatric care manager, at the request of Nicole Sabatina. [Jeannean Sabatina Testimony, Confidential Tr. 853:19-854:7.]

Future evidence of an intentional disregard of family.

Janette Kimble's neighbors and family members provided Jeannean Sabatina with Janette Kimble's family members' addresses and telephone numbers. [Id. at Tr. 995:2-996:23; Ex. 250 at SAB-006511, 006522.] The Sabatinas did not consult with Janette Kimble's family members when formulating a visitation plan for Janette Kimble after her admission to Rock Creek. [Id. at Tr. 996:25-997:13.] WLJ billing records do not indicate that Jeannean Sabatina conferred with Rock Creek's medical staff when formulating visitation and communication restrictions. [Id. at Tr. 997:14-998:6; Ex. 250.]

Bonnie Lazzell paid to travel from her home in Danville, Illinois to Phoenix four times to assist Janette Kimble in resisting the Sabatinas' attempt to be appointed fiduciaries. [Id. at Tr. 330:20-24.] Janette Kimble's estate spent \$28,000 resisting the Sabatinas' guardianship and conservatorship petition. [Bonnie Lazzell Testimony, Tr. 380:25-331:8.]

The cost of the litigation to Kimble and the benefit to the Sabatinas.

The Sabatinas sought reimbursement from Janette Kimble's estate for their fees, attorneys' fees, costs and Rock Creek costs. Janette Kimble's court appointed

counsel sought reimbursement of his fees. [Ex. 218-221 at SAB-006319-6360.] Eventually, both sides dropped their demands for payment against the other. Bonnie Lazzell explained the reason Janette Kimble's estate dropped its demand for reimbursement was because the estate would be depleted if they continued to pursue reimbursement from the Sabatinas. [Bonnie Lazzell Testimony, Tr. 331:15-332:15.]

The cost.

Jeannean wrote in the billing record that the POA was trying to paint the Sabatinas as the "enemies." She claimed he did this by telling Kimble that the Sabatinas would put her in a nursing home, cause her to lose her home, and cost her \$14,000 a month. [Id.] His estimate was not accurate. It was over \$19,000 a month.

The billing records of the Sabatina report that Kimble had \$28,215.48 in her bank accounts at the time her POA Dennis Meyers was caring for her and when the Sabatinas entered her life. During their involvement she had two monthly social security deposit checks of \$1,297, and a refund of rent of \$1,530 plus minor cash and interest. These combined with her bank accounts totaled, \$33,344.44. [Ex. 250 at SAB-006496.] In the approximate three months that followed, until the Sabatinas were forced out of her life, the Sabatinas had spent \$59,973.87.

These included their approval of payments to WLC of \$26,222.70, (\$254.71 per day in services alone) the payment of attorney fees to *Mushkatel Robbins & Becker* of \$12,492.00, and the \$21,259.17 cost of their decision to remove Kimble

against her will from where Kimble and her family members wanted her to live (which also had available locked down memory care) into the "Rock Creek Alzheimer's Specialty Care Center" that both Kimble and her family opposed. [Id. at SAB0006495-7 & 6556.]

The difference between the facility used by the Sabatinas and the one chosen by Kimble and her family is further exemplified by the billing statements. When the family returned Kimble to her family from Rock Creek, they were charged over \$8,000 for "fees imposed due to lack of 30-day notice by family of Ms. Kimble." [Id.] It is not surprising that there is no evidence of any effort by the Sabatinas to do anything to recoup those monies. In comparison, when Kimble was moved by the Sabatinas from Fellowship Square, it refunded rent of \$1,530. [Id. at SAB-006496.]

The family would also be forced to spend an additional \$28,000 in attorney fees to fight the guardianship. [Lazzell Testimony, Tr. 330:25-331:8.] The total cost to Kimble was \$87,973.87.

The aftermath.

The result of their effort is that Janette Kimble now resides with family, Bonnie Lazzell and her husband, in Danville, Illinois. [Id. at Tr. 309:17-19.]

PREFACE

This is a case of patterns. The patterns are not new. They unfortunately repeat themselves, time and time again, are thought to be stopped or removed, and yet

resurface. Not all fiduciaries display these patterns. That some still do is evidenced by this case. Alyssa Gray is an attorney who was called as a witness by Jeannean and Nicole Sabatina. Ms. Gray served as a Judge Pro Tempore for the Superior Court of Arizona in Maricopa County from 2006 until 2017. In that service she worked, among other duties, in the Probate Division. She has also served as a private mediator to assist in the resolution of probate-related disputes.

In private practice she has been appointed as Guardian Ad Litem in that same court to assist in complicated matters involving incapacitated and vulnerable adults. A significant part of her law practice has involved matters regarding professional fiduciaries. Included in those cases was the representation of the Maricopa County Public Fiduciary from approximately 1993-1996. These high-profile cases resulted in the recovery of over \$1 million mostly for excessive fees, commingling and self-dealing. Her opinion is that "[t]he publicity from these cases was the catalyst for significant changes in the profession." [Ex. 333.]

In about 1997, Ms. Gray was part of an *ad hoc* committee designed to help formulate testing and protocols to formally call for certification of fiduciaries. In or around the year 2000, Ms. Gray was appointed a member of the Supreme Court Fiduciary Oversight Committee. That Committee preliminarily looked at statutory issues related to fiduciaries, arrest warrants, and random audits. That Committee was followed by a reformulated Supreme Court established Fiduciary Advisory

Commission. It worked on the state laws addressing fiduciaries and set up different kinds of procedures. Ultimately, this work assisted in the bringing about of statutory changes and the Certification and Licensing Division taking shape as the administrative arm of the Supreme Court that would oversee the certification and licensing of fiduciaries and the Fiduciary Licensing Program. [Id. & Alyssa Gray Testimony, Tr. 1086:14-1087:3.]

In her practice, she has brought to successful conclusion over 50 surcharge actions against fiduciaries prior to the statutory and court changes that brought licensure and licensed fiduciaries after licensure was implemented. She testified that it is her opinion fiduciary licensing and regulation came about to protect the public from incompetent and unscrupulous fiduciaries. [Alyssa Gray Testimony, Tr. 1105:24-1114:11.]

Ms. Gray did not intimate that she was the sole impetus for change. Her testimony was that she was part of a tidal wave of individuals who joined with members of all three branches of government to address this tragedy and tried to resolve it. Such was and remains the length and breadth of its need for reform and regulation. It is a tragedy shot through with hope.

The courts in Arizona have broadly interpreted Arizona law to protect the most vulnerable in our state. This is exemplified by the language in *Davis v. Zlatos*,

211 Ariz. 519, 525 (App. 2005). There, the Court of Appeals declared in interpreting the Arizona Adult Protective Services Act ("APSA") that,

To apply the APSA to Mrs. Zlatos it is only necessary to find that she was either incapacitated *or* vulnerable. Although a person may be both, *see McGill*, 203 Ariz. at 528, ("Ms. McGill, of course, fits either definition, and APSA clearly covers her."), the terms are not equivalent and address distinct dangers to the elderly. An incapacitated person cannot make informed decisions. A vulnerable person may be able to make such decisions, but is unable to protect herself against being abused, neglected or exploited. *The protections of the statute extend to a vulnerable adult even if the person is not incapacitated.*" (Emphasis added).

The court stated the role of the trial courts in analyzing evidence and the method of analysis to follow. That court stated the first step was to determine whether the ward meets the statutory definition of "vulnerable adult." A.R.S. § 14-5101 defines "incapacitated person" as "any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person" *Davis, supra*.

Because the term "impairment" is not defined, the ordinary meaning of the word is to be applied. An "impairment" was found to be something that causes a "decrease in strength, value, amount, or quality." Webster's II, New College Dictionary 553 (Houghton Mifflin Co.2001). The court found "that Mrs. Zlatos had

at the very least begun a slide into dementia and mental impairment.” Her ability to care for herself having been plainly decreased, the court found that such an individual is physically impaired. The opinion includes the following quotation.

[T]he circumstances surrounding financial abuse are further complicated because unlike the bruises that often accompany physical abuse, the signs of financial abuse may not be so obvious. Elderly victims are more likely to report physical abuse, believing that bodily injury is more threatening than any material losses [sic] they suffer. Further, many senior citizens are embarrassed about being financially victimized, and there are rarely witnesses to report it. Sometimes the elderly simply do not realize that anything is amiss. Shelby A.D. Moore and Jeanette Schaefer, *Remembering the Forgotten Ones: Protecting the Elderly From Financial Abuse*, 41 San Diego L.Rev. 505, 509–11 (May–June 2004) (internal quotes and footnotes omitted).

Davis, supra at 526.

In May 2014, Laurie Roberts reported for the Arizona Republic the case of a woman who had \$1.3 million in assets in 2005 but suffered a stroke. A professional guardian was put in place. “By 2009, she was broke and moved to nursing home for indigents.” The article reported that her lawyers “worked for free for years, trying to stop the bleeding and then to get some of her money back.” Ms. Roberts report that the ward got “the chance to change things. As a result of what happened to Marie, laws were changed and reformed were enacted in the hope of better protecting the Maries among us.”³

³ Roberts, Laurie. *Probate victim spoke softly but was heard*. Azcentral.com, 20 May 2014. <https://www.azcentral.com/story/laurie-roberts/2014/05/07/marie-long-probate/8638289>.

This need for court oversight and protection is not limited to Arizona as it was made clear by the U.S. Government Accountability Office ("GAO"). In a 2010 report, it found hundreds of allegations of financial exploitation by guardians in 45 states, including Arizona. "In 20 selected closed cases, GAO found that guardians stole or otherwise improperly obtained \$5.4 million in assets from 158 incapacitated victims, many of whom were seniors." In 12 of the 20 cases, the courts failed to oversee guardians once they were appointed."⁴ One of those cases cited as an example of exploitation involved a guardianship in Arizona. Every state now has a version of an Adult Protective Service Law, covering such issues as the definition of a "vulnerable adult". 19 A.L.R.7th Art. 2 (Originally published in 2016).

The law that established fiduciary relationships granted an ability of others to control the estates and persons who were most vulnerable. The purpose of the law was to protect those who are uniformly recognized as needy and at risk. An unintended consequence of the law was the enabling of some people, groups, or organization to have unfair advantages over these same individuals. Laws, Codes, Rules, and Orders bind all people living in a community. These protect our general safety and ensure our rights as citizens against abuses by other people, groups, or organizations.

⁴ USGAO, *Cases of Financial Exploitation, Neglect, and Abuse of Seniors*, Sept. 2010, <https://www.gao.gov/new.items/d101046.pdf>.

Since first considering how to better protect vulnerable members of the public through certification and then licensing of fiduciaries more than 20 years ago, the purpose of these statutory, administrative and rule changes have focused on the protection of these most vulnerable members of our public.

This case demonstrates that despite the significant efforts by all three branches of government, the need for protection remains. The conduct described here also underscores the need for the court to remain resolute and steadfast in its oversight, without which many of the transgressions could not have been uncovered. Before a ward is moved into a "memory care" facility or any restrictive setting, the fiduciary should be asked questions under oath:

-How does this promote "the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance?" ACJA § 7-202(J)(3).

-Is the decision to move or initially place the ward in a restricted setting, "in accordance with the determined preferences of the ward or protected person, past or current, in all instances?" ACJA § 7-202(J)(3)(b).

-Why is "the fiduciary reasonably certain the decision (to act in accordance with the determined preference of the ward or protected person) will result in substantial harm" to the ward or protected person?

-What is the objective evidence that that supports that opinion? What alternatives have been explored? ACJA § 7-202(J)(3)(b) & ACJA § 7-202(J)(4).

-Has the fiduciary met their burden of proof to remove the ward from their home or to separate the ward from family and friends? ACJA § 7-202(J)(4)(e).

When the fiduciary seeks to remove the ward "from the home of the ward or separate the ward from family and friends," the burden of proof is upon the fiduciary to prove that "removal is necessary to prevent substantial harm or because of financial constraints." The fiduciary should be required to meet that burden or be removed or required to pay from their own funds for the cost of that issue being litigated.

This case also lays out a recurrent theme of the use of a quasi-police investigation and control under the auspices of licensure as a fiduciary. Courts must be vigilant to assure that the fiduciary "only shall use the vulnerable adult's assets solely for the benefit of the vulnerable adult and not for the benefit of the person who is in the position of trust and confidence to the vulnerable adult" A.R.S. § 46-456. It is clear from this case that court oversight prevented other transgressions from occurring. The judiciary must continue to do so.

L CONCLUSION OF LAW RE: PURPOSE

The primary purpose of the ACJA regarding the certification and licensing of fiduciaries and the Fiduciary Licensing Program itself is "the protection of the public

in accordance with all applicable statutes, ACJA sections, and court rules.” This purpose is safeguarded through the “effective administration of the fiduciary program” and “licensure of fiduciaries and fiduciary entities for performance of responsibilities in a professional and competent manner” ACJA § 7-202(C). Fiduciary licensing and regulation must be vigilant to protect the public from incompetent and unscrupulous fiduciaries.

II. SUMMARY

General Analysis

Litigation is the legal method by which disputes, or controversies are resolved. In life and litigation, one purpose for reasoning and analysis is to arrive at the truth of things. In litigated matters this is often an arduous task. A fact is usually determined from the evidence by one of two separate methods. The first method is by direct evidence. This is typically far more obvious and objective. It is a basic fact that is rarely in dispute. By example, in these allegations it is no illusion that the Licensees were factually licensed fiduciaries. The parties stipulate to this fact, but there is also a record of their individual applications.

The second method is circumstantial or by inference. It is as a fact that is established because it is logically inferred from a proven fact. In basic terms, it is a fact based on factual premises from which a conclusion may be drawn. To be an inferred fact, both the premises and the conclusion must be true. However, for a

statement to be true it cannot be capable of meaning two opposing things. A direct fact or an inferred fact establishes objectively the real state of affairs.

Both the Civil and Criminal Revised Jury Instructions with minor differences differentiate these as follows.

Evidence may be direct or circumstantial. Direct evidence is a physical exhibit or the testimony of a witness who saw, heard, touched, smelled or otherwise actually perceived an event. Circumstantial evidence is the proof of a fact or facts from which the existence of another fact may be determined. The law makes no distinction between direct and circumstantial evidence.

The evidence is analyzed, and conclusions are drawn from that evidence regardless of whether it is direct or circumstantial.

Testimony is evaluated as it is not merely in legal proceedings but rather as is done in ordinary life. Both the Civil and Criminal Revised Jury Instructions with minor differences are designed to aid jurors understand that evaluation process.

In deciding the facts of this case, you should consider what testimony to accept, and what to reject, you may accept everything a witness says, or part of it, or none of it. In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness' ability to see or hear or know the things to which he/she testified; the quality of his/her memory; the witness' manner while testifying; whether he/she has any motive, bias, or prejudice; whether the witness is contradicted by anything he/she said or wrote before trial, or by other evidence; and the reasonableness of the testimony when

considered in the light of the other evidence. Consider all of the evidence in light of reason, common sense, and experience.

Unlike civil or criminal proceedings, under the ACJA § 7-201(H)(21)(c)(2), "The hearing officer may conduct a hearing in an informal manner and without adherence to the rules of pleading or evidence." The parties were informed of this during the initial prehearing conference as well as by minute entry. Hearsay is permissible in these proceedings, but even if it were not,

[Evidence] Rule 801(d)(1)(A) provides that a statement is not hearsay if "[t]he declarant testifies and is subject to cross-examination about a prior statement, and the statement ... is inconsistent with the declarant's testimony." This is a "broad exception to the hearsay rule" because "[i]t is based upon a belief that a jury ordinarily should be permitted to consider a prior inconsistent statement in determining credibility." *State v. West*, 238 Ariz. 482, 501 (Ct. App. 2015), citations omitted.

The testimony of the Sabatinas was significantly undermined by their own conflicting statements. They were not credible. Examples of these inconsistencies are replete throughout this case. One of the underlying matters involved the 85-year old woman, Jeannette Kimble. Sometime during the week of March 18, 2017, Nicole Sabatina had her first face to face encounter with Kimble. Nicole says she met with her because Kimble had called her.

Nicole Sabatina later informed CLD that on the day she first saw her that Kimble "did not remember that she had called me nor did she know who I was." [Id. at SAB-006458.] If these claims of Nicole are true, then it would be clear to anyone

that Kimble was a vulnerable adult. It is clear Nicole informed Kimble that she was a person in a position of trust and confidence to Kimble. But what that position was would change as the need arose.

Nicole Sabatina emailed Karen Cooley Esq., on March 20, 2017 and told her she had received a call from Jean[n]ette Kimble telling her that she was the *trustee* for Ms. Kimble. She told Cooley that she was set to see Kimble the following day. [Ex. 239.] Yet Nicole told CLD that on March 21, 2017, at 10:30 a.m. she “received a frantic phone call from Ms. Kimble indicated she was in need of my help and it was an emergency and that I was her *POA*.” (Emphasis added.) She told CLD that she saw Kimble later that *same* day. [Ex. 240, SAB-006457.]

On April 12, 2017, the story transitioned again. Nicole called Adult Protective Services and was untruthful in telling them that “she was the *licensed fiduciary* that has been *assigned* with the client.” (Emphasis added.) [Ex. 237 at SAB-006441.]

When Jeannean met with Kimble the first time she introduced herself as her *geriatric care manager* who was going to “help Janette Kimble” obtain the medications and follow-up medical visits she needed. The evidence proves a different plan was in place. [Jeannean Sabatina Testimony, Confidential Tr. 834:9-21; Ex. 250 at SAB-006459.]

When Jeannean took Kimble to Dr. Sodhi, she told him that she was “*her social worker*.” [Id. at SAB-006501 & Sealed Record at SAB-010455.]

When Jeannean was asked if Nicole and she had planned to apply to be Kimble's guardian and conservator "as of April 17, 2017, she answered, "No, we did not. Our thought was, again, contacting the family." She complained that they had "No way of contacting anyone" that was a family member. [Jeannean Sabatina, Tr. 82:4-21.] However, her billing statement entry for March 22, 2017 stated they were already discussing petitioning the court to become her guardian and conservator. It is a plan they never deviated from. On March 23, 2017 Nicole called attorney Matt Gobbato of *Mushkatel, Robbins & Becker* where Nicole worked as a 1099 employee and told him to "move forward with the Guardian/Conservatorship for her." On March 24, 2017 Nicole met again with Mr. Gobbato. [Ex. 250 at 006498-6500.] On March 29, 2017, Nicole wrote to Jeannean telling her that the law firm she worked at, Mushkatel, Robbins, & Becker, were *drafting* the petition. [Id. at SBA006503.]

When asked if the nurse Jeannean hired full time for WLJ provided clinical services, Jeannean denied that the nurse did. [Jeannean Sabatina, Tr. 37:2-4; Ex. 316 at 9948.] It is clear she changed her testimony for the hearing. When asked about the use of a nurse on March 21, 2018, she swore the nurse "provides the clinical piece." [Ex. 316 at 9945:20-21.] When asked "what's the clinical side of the practice?" She answered, "Nursing." [Id. at 9948:10-12.] These duties included doing vitals and all

the services that nursing staff would do at a memory care facility, except her nurse also did quarterly chart reviews. [Id. at 949:13-50:24]

Jeannean was asked to explain the responsibilities of, or otherwise tell, what a guardian did. She testified that a guardian oversees the care of the ward, schedules all appointments and “[o]n most occasions, they are—a lot of them are followed in-house.” [Id. at 9908:19-24.] She stated that if there is something extraordinary, “Nothing is done unless it is approved by the conservator that this is affordable to this protected person; if it is not, then we try to take a different avenue.” [Id. at 9909:5-8.] She was asked, “What is a conservator?” She answered, “My role, as I see it, is to provide the protected person, to care for them, to protect them, to advocate for them, and to see that their needs are met and that they are placed in least restrictive based on their needs. My role is to keep Nicole.” [Id. at 9909:13-19.]

When asked how they avoid overstepping into each other’s area of responsibility, she answered, “I think for me, I understand where my expertise lies. And I understand where hers is. And I respect that. She respects mine.” [Id. at 9910:8-14.] She explained that there was only one case in which Nicole was appointed guardian and conservator, but she did “care management” and stated it was “per the family request.” She was hired by her daughter and reported to her. She was asked “Does that involve a contract, an agreement of sorts?” She answered “Usually, she does sign a letter of agreement for me, yes.” [Id. at 9913:6-9914:3.]

The conflict of this only occurring on one such case and her later testimony that she “usually” entered a contract with Nicole was apparent. When confronted with the discrepancy she claimed it was the only time that had happened.

This line of questioning was returned to later in the deposition. Jeannean was asked when she was both the guardian and conservator whether Nicole was involved. She answered that she was. She was asked what was her involvement? Jeannean answered, “She managed the estate.” The interviewer asked, “She managed the estate?” Jeannean said “She—well, the —she did the financial side of that dual role.” [Id. at 9937:18-9938:2.]

When initially asked what the difference was between her acting as a guardian and a geriatric care manager, Jeannean Sabatina testified she was only a “resource.” “I provide supervision and oversight of the services the ward is receiving.” She later admitted that the guardian “provides the oversight as well.” [Tr. 28:13-22.]

Nicole was asked if all services provided by WLJ, their jointly owned limited liability company, were subject to the statewide fee guidelines. She agreed it was. [Tr. 245:23-246:3.] When shown the billings that WLJ billed for “maintenance” of all client files at \$55 per hour, she testified she believed that the fee guidelines allowed for a certain amount of clerical work such as the maintenance of files. [Id. at 247:25-248:11.] When confronted with the actual guidelines that stated such charges were prohibited she reversed her position and testified that the very thing

she testified was clerical, that she suddenly did "not consider those clerical type services." [Id. at 249:5-9.] Far more troubling is the Sabatinas' subterfuge in the Kimble matter which is separately discussed below.

In her billing statement Nicole makes no mention that Kimble did not know who she was when she arrived. Yet she states that she "discussed at length with her the observations of Howell Hospital and the referral to a psychiatrist." It is clear that she also accessed her last will and testament. There was no authority, legal or otherwise, for her accessing those records, especially when Nicole certified to CLD that Kimble could not remember who she was from the day before, despite Nicole's claim that Kimble had purportedly looked up her name and phone number, called her, and carried on a conversation with Nicole.

Kimble had a POA, Dennis Meyers. The Sabatinas knew this. In her first encounter with Kimble, Nicole immediately undermined Kimble's POA by expressing to Kimble her "concern with Dennis accepting money for jobs performed for her, and my concern of Dennis being the sole beneficiary of her Will." [Ex. 250 at SAB-006598.] Yet she charged Kimble, a person who did not even know who she was, \$125.00 for that visit. There is no evidence that there was any agreement by Kimble to be charged any amount. In short, Nicole did exactly what she expressed concern over regarding Mr. Meyers. She charged Kimble.

Licensees called as one of their experts, attorney Lawrence F. Scaringelli. Lawyers can also be called as fact witnesses. But when they offer opinions their role changes.

Experts, even lawyer-experts, are not advocates for the retaining party. The lawyer-expert witness proffers opinions to aid the analysis of how the underlying facts of the case comport with the legal standard or rule.

Lisa M. Panahi, Senior Ethics Counsel and Ann Ching Ethics Counsel at the State Bar of Arizona, *When the Lawyer is Also an Expert*. March 2017 *Arizona Attorney*.

"The duty of the expert witness is incongruent with that of the lawyer representing the party, who must advocate the client's objectives diligently through all lawful measures." 5 D.C. Bar Ass'n Legal Ethics Comm., Op. 337 (2007)

Expert testimony confined within narrow bounds can be of assistance in any dispute resolution system. Lawyer-experts, like experts from other professions and trades, assist the trier-of-fact in navigating the evidence and principles integral to the issue at hand. When they shift to advocacy or actively inject factual testimony they cloud the issues rather than clarify the process. Experts may state their opinions about the significance of facts but only if their specialized knowledge "will help the trier of fact to understand the evidence or to determine a fact in issue." Ariz. R. Evid. 702(a).

Mr. Scaringelli repeatedly struggled with objectivity and instead would interject advocacy by offering answers that were not responsive to the question or

were pure advocacy. This occurred early in his testimony. [Tr. 922:3-5.] This led to a caution that he was not to "advocate for either party." He was warned to answer the question asked, "rather than you answer what you think he should have asked you." [Id. at 922:6-15.] Despite that warning, when asked "when" did care management issues arise or "where" that came from, he launched into non-responsive advocacy.

The problem is, what is care management and what is guardian service and where do you draw the line, and what falls under which rubric and is there a bright line between the two? And some people try to say there is a bright line, but I don't believe there is. And it makes it difficult, when you say you can't do care management. [Tr. 931:22-932:4.]

He was asked regarding an answer, "So you are going back to the latter part of 2017, I believe?" He answered "Correct." He then continued for ten lines of testimony which ended with what resulted in a different answer to the same question. "So to my knowledge, no." [Id. at 925:2-13.]

When later asked, "Was the accounting ultimately approved by the Court?" His answer traversed that he thought they were in the "process of filing the third accounting" to his claim that "the Sabatina have basically not been paid in that entire time." This non-responsive answer then reversed and stated that there was a credit due the ward. The answer then veered another direction when he stated that "the credit has been used up" and then reversed to "but it may still actually have some

credit going into the next accounting period.” [Id. at 928:7-19; See also Sealed Tr. at 951:14-17.]

Summarized Findings.

In eight separate counts Licensees were charged with multiple violations of court rules, statutes, and the ACJA. These are reproduced and are attached in Appendix A for easy reference. Additionally, that Appendix includes the full text of those ACJA sections, statutes, and court rules so cited and alleged to be violated. The findings for each of the eight counts are summarized in the order charged.

1. The licensees engaged in multiple acts of conflict of interest.

The evidence overwhelmingly establishes that the Licensees engaged in self-dealing and conflicts of interest as well as the appearance of self-dealing and conflict of interest. They actively and intentionally engaged in multiple and repetitive acts of conflict of interest to profit themselves at the direct harm to the individuals they were charged to protect.

2. The licensees engaged in multiple acts of filing false or misleading estate budgets.

The evidence overwhelmingly establishes a knowingly, if not intentional pattern of filing with the Court or presented testimony to the Court that was misleading, inaccurate, or false, or that contains misstatements, misrepresentations,

or omissions of material fact. These intentionally avoided transparency to the detriment of their clients.

3. The licensees engaged in multiple acts of filing false or misleading estate affidavits.

The evidence overwhelmingly establishes an intentional pattern of filing with the Court false or misleading affidavits. These false affidavits actively hid from the court their conflicts of interest in order to profit themselves at the expense of their clients.

4. The licensees on multiple occasions intentionally failed to timely amend budgets.

The evidence overwhelmingly established an intentional pattern of failing to timely amend budgets. These failings were precluded transparency, actively avoided court oversight, and were done to profit themselves at the expense of their clients.

5. The licensees violated the Arizona Statewide Fee Guidelines ("Guidelines").

The evidence overwhelmingly establishes that licensees intentionally, consistently, and routinely violated these Guidelines. Despite that they were repeatedly put on notice of these concerns raised by court accountants, this pattern continued at the expense of their clients and to profit themselves.

6. The licensees repeatedly engaged in improperly restricting their client's contact with family and friends.

The evidence overwhelmingly establishes that the licensees intentionally restricted their client's contact with family and friends, ignored their client's civil rights and liberties, independence, and self-reliance in order to profit themselves at the expense of their clients.

7. The licensees improperly operated under an assumed name.

A certificate holder is not allowed under the ACJA to transact business under an assumed name or under any designation, name or style, corporate or otherwise, other than the legal name of the individual or business entity. The licensees knowingly transacted business under an assumed name to conceal their conflict of interest to the harm of their clients and to profit themselves.

8. The licensees failed to report their misconduct.

Under the ACJA, a fiduciary is required to notify division staff if the fiduciary has knowledge that another licensed fiduciary, even a relative, has committed misconduct raising a substantial question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary. Each of the licensees knew that they were individually and collectively engaged in the conduct summarized above. They each had a duty to the report the other and failed to do so.

Overview

A Notice of Formal Statement of Charges and Right to Hearing was filed by the Supreme Court Certification and Licensing Division with the disciplinary clerk and served upon Jeannean Sabatina, License, Number 20615, and Nicole Sabatina, License Number 20684, ("Licensees"). Thereafter, this matter proceeded to hearing before the PDJ as the assigned hearing officer. After the closing of the record of a hearing, it is required under the ACJA that the hearing officer file a written recommendation with the disciplinary clerk which includes findings of fact and conclusions of law. The burden of proof is by preponderance of the evidence.

The ACJA provides that if the hearing officer recommends the Board enter findings that either or both Licensees committed one or more acts of misconduct, or violations, that the hearing officer include in separately stated sections of the recommendation report an analysis of mitigating and aggravating factors and recommend any imposition of permissible sanctions.

A judicial decision implicitly, if not explicitly, considers jurisdiction. "Subject matter jurisdiction" refers to a court's statutory or constitutional power to hear and determine a particular type of case. *See United States v. Cotton*, 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L.Ed.2d 860 (2002); *First Nat'l Bank & Trust Co. v. Pomona Mach. Co.*, 107 Ariz. 286, 288, 486 P.2d 184, 186 (1971) (in division); *Restatement (Second) of Judgments* § 11 (1982) (defining subject matter jurisdiction as a court's

“authority to adjudicate the type of controversy involved in the action”). Jurisdiction in this sense cannot be conferred by the consent of the parties and a court that lacks subject matter jurisdiction cannot adjudicate the action. *State v. Maldonado*, 223 Ariz. 309, 311, 223 P.3d 653, 655 (2010).

The parties in their Joint Prehearing Statement, (“JPS”) have stipulated as a fact that the Board has jurisdiction over the licenses of Licensees. [JPS Stip. Fact. 29.] It is stipulated the Board holds oversight authority to investigate complaints against licensees and to initiate disciplinary procedures under ACJA § 7-201(h). [Id. at 30.] Notwithstanding, it is prudent to review the issue of jurisdiction as the stipulation of the parties cannot confer jurisdiction where it is lacking.

III. LEGAL CONCLUSIONS RE: JURISDICTION

1. The Arizona Supreme Court has jurisdiction of the regulation of fiduciaries.

A.R.S. § 14-5651. That law directs that the Supreme Court “adopt rules” for implementing licensure for fiduciaries. “At a minimum the rules adopted” are required to have a “code of conduct.”

2. The Arizona Supreme Court promulgated the ACJA to provide the rules for implementing licensure for fiduciaries, the administration of the minimum qualifications for licensure, certification, and discipline of individual and business fiduciaries, and a code of conduct.

3. Fiduciaries are individuals and entities certified under ACJA § 7-202. Licensees. ACJA § 7-201 applies to licensed Fiduciaries. ACJA § 7-201(F) defines the "Role and Responsibilities of Certificate Holders" including Fiduciaries. It requires, among other things, that "[e]ach individual certificate holder shall adhere to the code of conduct or standards of conduct, subsection (J) in the applicable section of the ACJA."
4. The code of conduct applies under ACJA § 7-202(J) "to all licensed fiduciaries."
5. The Fiduciary Board is established by the Supreme Court of Arizona, whose members are appointed by the Chief Justice. ACJA §§ 7-201(D)(5)(a)–(b), 7-202(D)(4)(a).
6. The Board is empowered to enact its authority under ACJA §§ 7-201 & § 7-202.
7. The primary role of the Board is the protection of the public through the certification and oversight of certificate holders and the fair and impartial application of the sections of the ACJA and court rules. ACJA § 7-201(I).
8. Under the ACJA § 7-201(H)(22)(a), the hearing officer makes a written recommendation to the Board regarding alleged acts of misconduct or violations of the statutes, court rules, or applicable sections of the ACJA by certificate holders.

9. This hearing officer and the Board has jurisdiction. The procedural rights afforded to the license holders are substantive and meet the requirement for due process.

IV. PROCEDURAL HISTORY

The complaint, investigation and notice of formal charges.

1. The Certification and Licensing Division of the Supreme Court of Arizona ("Division") received an e-mailed complaint against Jeannean and Nicole Sabatina⁵ ("Licensees") regarding the protected person, Janette Kimble. [Ex. 241.] Pasquale Fontana, CLD Investigator, was assigned to investigate the Kimble Complaint. Pasquale Fontana Testimony, Tr. 470:17-471:4; 471:25-472:12. The charge alleged, among other things, that the Licensees moved Ms. Kimble from an independent living facility of her choosing to a lock down memory care facility and restricted family members and friends from visiting Ms. Kimble. Pasquale Fontana Testimony, Tr. 473:3-15; Ex. 241 at SAB-006491.

2. Pursuant to ACJA § 7-201(H)(1)-(4), the Division reviewed, screened, and investigated the complaint. During the Division's investigation "information was obtained indicating that the Licensees engaged in conduct that may have violated the [ACJA] in several other matters." [Ex. 296 at 1.] CLD had received allegations from Gail Krbecek involving their billing practices regarding fiduciary services

⁵ They collectively also do business under the name *With Love, Jeannean, LLC*.

they provided to Lavern Stasik ("Stasik Complaint") Ex. 212 at SAB-006243. Pasquale Fontana Testimony, Tr. 473:24-475:11.

3. That investigation included witness interviews, an extensive review of court records and the fiduciary records produced by the Licensees. Pasquale Fontana Testimony, Tr. 473:16-2. The Licensees were interviewed and were represented by counsel during the interviews. Pasquale Fontana Testimony, Tr. 479:24-480:3; Ex. 298 (media file); Ex. 299 (media file); Ex. 315 at SAB-009679; Ex. 316 at SAB-009832. The Licensees' counsel, Zachary Mushkatel, submitted their response to the Director Initiated Complaint on December 29, 2017. Pasquale Fontana Testimony, Tr. 481:7-482:3; Ex. 300 at SAB-008495; Sealed Ex. 301 at SAB-00852.

4. At the request of the CLD and as authorized under ACJA § 7-201(D)(2)(b)(3), a director-initiated complaint followed. [Ex. 296 at 1, 6 & JPS Stip. Fact 31.] Ultimately, the matter was assigned was assigned Complaint Numbers 17-0027 and 17-0028. On June 26, 2018, pursuant to ACJA § 7-201(H)(5)(a)(3), Probable Cause Evaluator, Mike Baumstark, entered a finding that probable cause existed as to Allegations 1 through 3 in complaint numbers 17-0027 and 17-0028. The Statutes, Court rules, ACJA, and orders cited as relevant to the alleged acts of misconduct are detailed in the Investigation Summary, Probable Cause Analysis and Determination Report and Order of the Board [Exs. to Notice

of Formal Statement of Charges and Right to Hearing; Ex. 356 at 133; *See* also Appendix A attached.]

5. Pursuant to ACJA § 7-201(H)(1)(i)(2) and (H)(5)(c), the Division forwarded to the Fiduciary Board ("Board") the investigation summary, the finding by the Probable Cause Evaluator, and a written recommendation by the Division Director for the appropriate disposition of the complaint. [Ex. 356.] On July 12, 2018, the Board adopted all recommendations of the Division Director with respect to Jeannean, Nicole, and WLJ, Jeannean, LLC ("WLJ"), finding grounds for formal disciplinary action existed and voting to revoke the licenses of Jeannean and Nicole. [Ex. 356 at 134–38.]

6. On July 19, 2018, Notice of Formal Statement of Charges and Right to Hearing in this matter was filed with the disciplinary clerk. [Ex. 356 at 8–10.] Jeannean and Nicole acknowledge that they were properly served. [Licensees' Prop. Findings 2.] Pursuant to ACJA § 7-201(H)(13), they timely requested a hearing. A request for hearing must include "the ACJA subsection entitling a person or business to a hearing, the factual basis supporting the request for hearing and the relief demanded." Any defenses not made in their Answer are waived. ACJA § 7-201(H)(11).

Procedural compliance

7. In compliance with ACJA § 7-201(H)(20), a telephonic prehearing conference was held on September 4, 2018. Both parties were represented and appeared at that initial conference. Written Orders were entered imposing limitations to promote simplicity in procedures, fairness in administration, elimination of unnecessary expense, and protection of the public while preserving the rights of the certificate holder. The cases were combined for all purposes. The matter was set for hearing.

8. The parties were informed that the ACJA sets forth the legal authority and jurisdiction for the hearing. The parties were reminded with emphasis that the Division has the burden of proof "by a preponderance of the evidence." ACJA § 7-201(H)(21)(c)(4). The parties were informed that ACJA § 7-201(E)(2)(c)(1)-(5), (H)(12)-(H)(23), and (H)(25)-(H)(27) provides the procedures for the hearing. The parties were reminded that the hearing officer makes binding findings of fact and conclusions of law, and these findings and conclusions form the basis of a recommendation to the Board on the action.

9. The hearing was scheduled to commence on November 26, 2018. The parties were ordered to "immediately exchange any exhibits which they may introduce at hearing." This order was issued to assure compliance with ACJA § 7-201(H)(17)(a), which requires the parties to file all pleadings or other documents

with the disciplinary clerk at least fifteen days prior to the scheduled hearing date, and to avoid surprise. The parties were ordered to exchange the names of witnesses whom the disclosing party expected to call at hearing and provide a fair description of the substance of each witnesses' expected testimony. Each party was ordered to file a prehearing memorandum one week before the hearing outlining "the facts which are involved and a brief discussion of how these facts apply to that party's interpretation of the [ACJA]."

10. For reasons stated on the record, the hearing was rescheduled to begin on February 13, 2019. Pursuant to ACJA § 7-201(H)(21), the hearing officer possesses broad powers over the procedure at the hearing, and as authorized under § 7-201(H)(21)(c), the hearing officer conducted the hearing "in an informal manner and without adherence to the rules of pleading or evidence." At the conclusion of the hearing on February 21, 2019, each party was ordered to file a proposed recommendation with findings of fact and conclusions of law.

The Hearing

On February 13, 2019, this matter proceeded to hearing. Nancy Bonnell and Caroline Shoemaker appeared for on behalf of the Attorney General. Gary Strickland appeared on behalf of Jeannean and Nicole Sabatina. The hearing was conducted and considered in accordance with the ACJA. The hearing was open to the public and was attended occasionally by the public. ACJA § 7-201(H)(21)(c)(1). All

testimony taken was required to be under oath or affirmation, except matters of which judicial notice was taken or entered by stipulation. ACJA § 7-201(H)(21)(c)(3). The hearing was conducted and recorded in compliance with ACJA § 7-201(H)(21)(d)(1).

"In all formal disciplinary matters brought as the result of an order by the board, evidence in support of the formal statement of disciplinary charges is presented first and carries the burden of proof by a preponderance of the evidence." ACJA § 7-201(H)(21)(c)(4). All proposed exhibits were admitted by stipulation of the parties. The following witnesses testified at the hearing: Jeannean Sabatina; Nicole Sabatina; Bonnie Lazzell; Sheryll Prokop; Pasquale Fontana; Shelia Clark; Kari Robinson; Jean Martin; Stephanie Fialkin; Sharon Bell; Lawrence Scaringelli; and Alisa Gray.

V. FINDINGS OF FACT⁶

The JPS Stipulations of Material Fact and Applicable Law.

The parties in their JPS stipulated to certain material facts and the applicable law to the issues raised by the charges. "A stipulation by the parties as to the facts, so long as it stands, is conclusive between them, and cannot be contradicted by evidence tending to show the facts otherwise." *Higgins v. Guerin*, 74 Ariz. 187, 190

⁶ Where not otherwise indicated, the findings of fact are drawn from testimony or exhibits.

(1952) (citation omitted). Consequently, this hearing officer is bound by those stipulations. The following are accepted as facts.

1. In her April 22, 2008 application for licensure as a fiduciary and in all renewal applications, Jeannean Sabatina represented that she has read, reviewed, and agreed to abide by Arizona Code of Judicial Administration ("ACJA") §§ 7-201 and 7-202, applicable to licensed fiduciaries.

2. In her March 9, 2012 application for licensure as a fiduciary and in all renewal applications, Nicole Sabatina represented that she has read, reviewed, and agreed to abide by ACJA §§ 7-201 and 7-202, applicable to licensed fiduciaries.

3. As licensed fiduciaries, Jeannean Sabatina and Nicole Sabatina are mandated to perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders and the ACJA.

4. Jeannean Sabatina is [the mother of Nicole Sabatina].

5. Jeannean Sabatina has had an ownership interest in WLJ from 2011 through the present.

6. Nicole Sabatina has had an ownership interest in WLJ from 2015 through the present.

7. WLJ is a geriatric care management business and provides geriatric care management services.

8. WLJ engages in fiduciary activities.
9. WLJ is not a licensed fiduciary entity.
10. Jeannean Sabatina is a certified geriatric care manager.
11. Jeannean Sabatina provides geriatric care management services to wards in probate cases for which she is, at the same time, the court appointed fiduciary for those wards.
12. Jeannean Sabatina has provided geriatric care management services to wards/protected persons when, at the same time, Nicole Sabatina was the court appointed fiduciary.
13. Jeannean Sabatina bills the same hourly rate whether she is providing geriatric care management services or licensed fiduciary services.
14. A licensed fiduciary is required to file an Estate Budget within 90 days of appointment by the Court.
15. When Nicole Sabatina and Jeannean Sabatina were granted licensure, they agreed to abide by all statutes that govern their licensure.
16. Nicole Sabatina was a 1099 contract employee at Mushkatel, Robbins, & Becker, PLLC ("MRB") from 2012 through July 7, 2018.
17. Nicole Sabatina, while a 1099 contract employee of MRB, on occasion, retained MRB as counsel in probate cases for which she was the court appointed fiduciary.

18. On occasion, Jeannean Sabatina has retained MRB as counsel in probate cases for which she was court appointed fiduciary and while Nicole Sabatina was a 1099 contract employee of MRB.

19. As conservator, Nicole Sabatina is responsible for auditing and approving all billings requiring payment from clients' estates, including the guardian's billings.

20. As conservator, Nicole Sabatina is responsible for preparing and filing estate budgets with the court.

21. As conservator, Nicole Sabatina is responsible for preparing and filing annual accountings with the court.

22. As conservator, Nicole Sabatina audited the conservator's and guardian's billings to be paid from clients' estates for compliance with ACJA § 3-303.

23. Jeannean Sabatina and Nicole Sabatina are mandated to provide and/or ensure that reports, notices, financial accounts and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the ACJA.

24. Jeannean Sabatina and Nicole Sabatina are mandated by ACJA § 7-202 to not knowingly file any document with the court or present testimony to the court

that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts.

25. Jeannean Sabatina and Nicole Sabatina are mandated by ACJA § 7-202 to avoid self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety.

26. Jeannean Sabatina and Nicole Sabatina are mandated by ACJA § 7-202 to maintain independence from all service providers to enable the fiduciary to coordinate services, challenge inappropriate or poorly delivered services, and act in the best interest of the ward or protected person.

27. MRB attorneys represented either Jeannean Sabatina or Nicole Sabatina in the following matters:

- PB2015-002195 Dorothy Frieders
- PB2015-070041 Anna McClary
- PB2016-071488 Sonia Grove
- PB2017-050011 Janette Kimble
- PB2014-071019 Nancy Chilton
- PB2013-071060 Sue Rose Powell

28. Jeannean Sabatina and Nicole Sabatina are aware of the fee Guidelines.

29. The Board has jurisdiction over license numbers 20615 and 20684.

30. The Board holds oversight authority to investigate complaints against Licensees and to initiate disciplinary procedures under ACJA § 7-201(h).

31. On October 25, 2017, a Director Initiated Complaint was filed with the Division.

32. Nothing in the Exam Study Guide addresses A.R.S. § 14-5106, the Affidavit of Person to Be Appointed as Guardian or Conservator ("the Affidavit").

33. Nothing in the Complaint ("Formal State of Charges") indicates that the [Licensees] failed to utilize their individual license numbers when filing documents with the Superior Court, as required by ACJA § 7-202(F)(3).

34. In 2015, the CLD began an audit of the [Licensees], spending approximately two days, reviewing files and asking questions.

35. ACJA § 3-303(C);

36. ACJA §§ 3-303(D)(2)(c), (g)(2), (k) and (l);

37. ACJA §§ 3-303(D)(3)(c)(1),(3),(4), and (l), (m) and (q);

38. ACJA §§ 7-201(E)(2)(c)(2)(b)(iii);

39. ACJA §§ 7-201(E)(6);

40. ACJA § 7-201(F)(3);

41. ACJA § 7-201(G)(4)(c);

42. ACJA §§ 7-201(H)(6)(a), (g), (h), (j) and (k)(6), (7) and (8);

43. ACJA § 7-202(F)(10);

- 44. ACJA §§ 7-202(J)(1)(a), (b) and (c)(2) and (3);
- 45. ACJA §§ 7-202(J)(2)(a), (b)(1), (b)(2) and (b)(3)(a);
- 46. ACJA §§ 7-202(J)(3)(a) and (b);
- 47. ACJA §§ 7-202(J)(4)(e);
- 48. Arizona Rules of Probate Procedure Rule 20 and Rule 30.3;
- 49. A.R.S. §§ 14-5106(A)(2), (4) and (11).

Findings of Fact from the Record.

Jeannean Sabatina is a certified geriatric care manager and testified she has provided geriatric services since 2000. In 2009, she became a licensed fiduciary. [Tr. at 26:15–20.] In 2008, Jeannean opened Heartfelt Care, L.L.C. (“Heartfelt”), which provided geriatric care management exclusively. [Tr. at 30:23–25.] Subsequently in 2011, Jeannean dissolved Heartfelt and opened WLJ and has continuously had an ownership interest in it to the present. [Tr. at 32:3–4 & JPS 5.] WLJ is a “geriatric care management business and provides geriatric care management services.” [JPS. 7.] Since opening WLJ, Jeannean has provided wards with both geriatric care management services and fiduciary services. Generally, when Jeannean acts as a fiduciary, she does so as a guardian. [Tr. at 34:9–12.]

The daughter of Jeannean, Nicole Sabatina, has worked at WLJ since the date of its incorporation in 2011. [Tr. at 165:16–21.] In 2012, Nicole obtained her fiduciary license. [Tr. at 163:25–164:1–2.] In 2015, she was given an ownership

interest in WLJ. [JPS 6.] Generally, when Nicole acts as a fiduciary, she does so as a conservator. [Tr. at 34:13–15.]

In 2017, Patricia Grenier joined WLJ as a member to assist WLJ in the preparation of budgets and accountings for submission to the court after the court had raised issues regarding previously submitted budgets and accountings. [Tr. at 35:14–36:17.] She, like Jeannean and Nicole, is a licensed fiduciary. [Tr. at 35:5–9.] Patricia, Jeannean, and Nicole each own a third of WLJ. [Tr. at 34:19–35:7.]

Formal Charge 1. Conflict of Interest

Every licensed fiduciary is required to “exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate. The fiduciary shall manage and protect the personal and monetary interests of the ward or protected person and foster growth, independence and self-reliance to the maximum degree.” ACJA § 7-202(J)(2)(a). That duty requires the licensed fiduciary to avoid even “the appearance of a conflict of interest or impropriety.” That avoidance is broadly defined with a clear extensive reach. Its’ breadth and length are defined by requiring only that “other individuals may perceive that the conduct is self-serving or adverse to the position or best interest of the ward, protected person, or decedent.” ACJA § 7-202(J)(2)(b). Under ACJA § 7-202(J)(2)(b)(3)(a), unless otherwise authorized by the court, a fiduciary shall not “[p]rovide non-fiduciary services to the ward or

protected person if the fiduciary or a person or entity closely related to the fiduciary has a personal or financial interest.”

Licensees gave more than the appearance of conflict in hiring themselves in a company guise that they owned in every case in which Jeannean Sabatina has been appointed as guardian. The evidence supports that that they were engaged in clear self-serving conduct that was financially adverse to their clients. This is supported by their provision of non-fiduciary services through the company they owned towards or vulnerable persons while serving as fiduciaries for them; (2) providing services through WLJ that appeared unnecessary and/or redundant and approving the costs for those services as reasonable and necessary; (3) continuing to exceed the maximum allowable visits to wards or vulnerable persons despite notice of concern from the court; and (4) contracting with *Mushkatel Robbins and Becker* for legal representation of Jeannean and Nicole in their capacity as fiduciaries despite Nicole’s employment relationship with the firm.

Their expert witness, attorney Lawrence Scaringelli, ineffectually attempted to misdirect the analysis. Rather than address the conflict of interest of the Sabatinas providing non-fiduciary services to the ward or protected person by profiting through their company WLC and the personal relationship existent in hiring Jeannean as a “geriatric care manager,” he blame-shifted to the AOC. He argued it

would be work for the fiduciary to actually provide oversight, review the billings, and determine if they were appropriate and sustainable.

A. Well, what services can they provide? And I don't know that there's -- Again, I think it's how do you define it, and until you define it clearly, which I don't believe you can, how do you enforce it and how do I advise my client what they should or shouldn't do as a guardian?

Q. So basically you are saying, correct me if I'm wrong, it's a problem?

A. It's a big problem.

Q. And for whom is it a problem?

A. Well, I think it's a problem for the AOC, which has then become a problem for the fiduciaries after the fact, because they are playing armchair quarterback and saying, oh, you shouldn't do these things, and now we are going to come after you for doing these things. But at the time someone has to do these things, and, no, they don't fall under all the ACJA guidelines cleanly, they have to be extra services. So what do you do? Do you not do these things for the wards or do you do them and then explain them. Some of the issues that come up is, well, do you hire a care management firm. Well, there's another set of issues there because a care management firm now is a line item on the accounting, and it just says paid to ABC care management firm X number of dollars each month, and there's no oversight on what the services provided by the care management firm are. So, does

it make sense that that's farmed out or does it make sense it's kept in-house? [Lawrence Scaringelli, Tr. 933:25-935:1.]

For Mr. Scaringelli and the Sabatinas, it's better to trust that they will do the right thing because "there's no oversight" of a third-party provider employed by the guardian/conservator and therefore, more insight when the guardian/conservator provides multiple services because there will be no self-serving. It's a whisper without a promise. When one disagrees with the ACJA, they should seek to change it rather than ignore it.

a. WLJ

Under ACJA § 7-202(J)(2)(b)(1), the fiduciary shall "[a]void self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety. Self-dealing, a conflict of interest, or impropriety arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent." A conflict of interest may arise if "the fiduciary has dual or multiple relationships with a ward that conflict with each other or has a conflict between or among the best interests of two or more wards."

Under ACJA § 7-202(J)(2)(b)(3)(a), unless otherwise authorized by the court, a fiduciary shall not "[p]rovide non-fiduciary services to the ward or protected person if the fiduciary or a person or entity closely related to the fiduciary has a personal or financial interest."

Jeannean first applied for licensure as a fiduciary in 2008 and obtained licensure. WLJ was formed on July 29, 2011. [Ex. 318.] As stated above, Jeannean started WLJ in 2011. According to the Arizona Corporation Commission, Nicole, Jeannean's daughter, was added to WLJ as a member and owner in 2015. Then, in 2017, Patricia was added as a member and owner. Currently, Jeannean, Nicole, and Patricia each own a third of WLJ.

According to Nicole, WLJ provides guardian services, conservator services, probate and trust services, and certified geriatric care management. [Nicole Sabatina, Tr. 175:3–6, 178:13–25.] Geriatric care management services account for approximately half of WLJ's business. [Jeannean Sabatina, Tr. 75:2–6.] As Jeannean acknowledged at the hearing, the geriatric care management services Jeannean provides through WLJ are distinct from the services that a guardian is permitted to provide in Arizona:

Well, if I'm reading the statute correctly, the role of a guardian is to provide care and treatment. Visits are monthly, quarterly, unless there is a reason that it need to be done more frequently. That's the part of the care management. There is—I cannot, in good conscience—if I am responsible for someone's care and I am making decisions for their well-being, then who better to know their care, provide their care to work with a facility than me also as a certified care manager.

[Id. at Tr. 54:20–23, 55:19–56:18; Ex. 316 at 009921:23-009923:16.]

Jeannean went on to differentiate the responsibilities of a guardian and care manager in the following way:

A guardian is the legal authority and the ultimate decisionmaker for the needs of the ward, a protected person. . . . [T]he care management piece, I'm not a decisionmaker. I am a resource. I provide supervision and oversight [of the services they're receiving, whether they're in a facility or in a home].

[Id. at Tr. 28:11–15, 28:17–18.]

The conflict interest is clear that she was self-dealing. That she was aware she was self-dealing is apparent in what she did not do as much as what she did do. Pursuant to A.R.S. § 14-5106(A)(11), every proposed appointee must include in the disclosure affidavit “[w]hether or not the proposed appointee has an interest in any enterprise providing housing, health care or comfort care services to any individual, and, if so, the name and address of each such enterprise and the extent of each such interest.” Each of them disclosed the opposite. They certified that they had no interest in any business that provided health care and/or nursing care. But they each did.

Jeannean was limited to the number of visits she can have and so by use of WLJ she provides care management services, at a profit to herself, but failed to disclose she is doing so, and failed to obtain court approval for this conduct. It is self-dealing.

When serving as a court-appointed guardian, Jeannean determines whether a ward or protected person requires geriatric care management services. [Id. at Tr. 69:12.] Not surprisingly, in every case in which Jeannean has served as a guardian, Jeannean has determined the ward or protected person required geriatric care

management services. [Id. at Tr. 69:13–25.] Subsequently, in every instance, Jeannean has selected WLJ and as detailed below—at a significant profit to herself—to provide those services. [Id. at Tr. 69:3–70:5.] Nicole Sabatina acknowledged that a fiduciary's use of and charge for an employee to directly provide non-fiduciary services to a ward is legally impermissible. [Nicole Sabatina, Tr. 211: 6-19.] That many of the same services could have been obtained at a lower cost is apparent by the amount she paid the employees to do the very services provided and the amount of profit obtained. It is also apparent that Jeannean Sabatina billed visits to wards as a geriatric care manager to avoid the appearance that she, as the guardian, was exceeding the fee guidelines. [Jeannean Sabatina, Tr. 71:25-73:13.]

Nicole, as court-appointed conservator, hired WLJ, *and* Jeannean, to provide geriatric care management services to a protected person—Jeannean did not serve as a guardian for the protected person. [Nicole Sabatina Testimony, Tr. 129:3–19, 137:11–14.] The hourly rate WLJ charged protected persons for the provision of geriatric care management services did not differ from the rate Jeannean charged for the provision of guardian services. [Jeanine Sabatina, Tr. 54:13–19.] When serving as both a guardian and care manager for the ward and/or protected person, Jeannean admits that a majority of the services she provides to the ward and/or protected person are “directly related to care management.” [Ex. 331 at 23:7–20.] Nicole Sabatina, in her capacity as conservator, signed a letter of agreement with WLJ to

provide care management services to Anna McClary. [Id. at Tr. 136:21-137:14; Ex. 31, at SAB-002733; Ex. 315 at SAB-009727:17-19; SAB-009728:2-14; SAB-009732:3-20.]

Repeating the ACJA prohibitions as questions reveals their breaches. Do Nicole and Jeannean have "some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent?" ACJA § 7-202(J)(2)(b)(1). Are Nicole and Jeannean closely related? ACJA § 7-202(J)(2)(b)(3)(a). Is WLJ closely related to either of them? The answers to these questions are apparent; yes, yes, and yes.

As part of its geriatric care management services, WLJ has employed at various times a full-time licensed practical nurse to provide nursing services to wards and/or protected persons at the direction of Jeannean. [Tr. 36:20-37:1; Ex. 316 at 67:3-84:15.] Specifically, WLJ's nurse reviewed medications; took vitals; obtained information about pain, discomfort, incontinence, appetite, and medical history; listened to bowel sounds; examined for bruises; measured blood pressure and pulse; and made herself available to discuss dietary recommendations. [Id. at Tr. 41:20-42:20; 57:13-59:7; Ex. 76 at 002437.] While acting as guardian and care manager, Jeannean directed WLJ's nurse to provide certain of the above nursing services to the ward and/or protected person. WLJ paid its nurse \$24.00 an hour and billed clients between \$95.00 and \$115.00 an hour for her services. [Id. at Tr. 52:17-25.]

The Sebatinas gross profited themselves through self-dealing and made at least three times as much as the person performing the services. Lawrence Scaringelli, testifying on behalf of Jeannean and Nicole, agreed that nursing services were not included under the umbrella of guardian services. [Lawrence Scaringelli Testimony at Tr. 962:5-8.]

WLJ dispatched, and charged for, its nurse to visit wards, take their vital signs, and do well checks in facilities that had nursing or medical staff. [Tr. 42:21-43:12, 51:25-52:16; Ex. 316 at 009950:7-15.] According to Jeannean, under these circumstances, WLJ's nurse provided Jeannean, as guardian, with "details on day-to-day activities of daily living, incidents, vitals, things that [Jeannean didn't] obtain because [she was] not in there all the time." [Ex. 316 at 009952:24-009953:2, 009952:19-23.] Although the facilities' nursing staff could have provided Jeannean with the same information, Jeannean testified that "they [didn't] always provide it to us," so WLJ employed a nurse "to keep [Jeannean] apprised of the status of [her] protected persons." [Ex. 316 at 009953:6-12, 009953:17-18.]

Moreover, in one matter, immediately after Jeannean and Nicole were appointed guardian and conservator, respectively, WLJ notified existing caregivers that WLJ's nurse would take over certain services the existing group was providing to the ward. [Ex. 127 at 003675; Tr. 492:6-493:18.] At the time, Sun Cities CareGivers provided twenty-four-hour care service to the individual. [Ex. 356 at

010510.] Among the services Sun City CareGivers nurse provided was medication management. [Ex. 356 at 010510.] Sun City CareGivers nurse did not charge the individual for this service. [Ex. 127 at 003675.] Five days after Jeannean was appointed guardian, Jeannean notified Sun City CareGivers that WLJ's nurse would take over medication management. [Ex. 356 at 010510.] WLJ charged the individual for this medication management service. [Tr. 61:9-12]

The argument by Licensees to rationalize their conduct was that their nurses were not actually engaged in classic nursing. That issue is resolved not by their opinions but by statute and the Arizona Administrative Code.

A.R.S. § 32-1601 defines what nursing includes. The list is long and likely not exclusive.

- (a) Diagnosing and treating human responses to actual or potential health problems.
- (b) Assisting individuals and groups to maintain or attain optimal health by implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment.
- (c) Assessing the health status of individuals and groups.
- (d) Establishing a nursing diagnosis.
- (e) Establishing goals to meet identified health care needs.
- (f) Prescribing nursing interventions to implement a strategy of care.
- (g) Delegating nursing interventions to others who are qualified to do so.
- (h) Providing for the maintenance of safe and effective nursing care that is rendered directly or indirectly.
- (i) Evaluating responses to interventions.
- (j) Teaching nursing knowledge and skills.
- (k) Managing and supervising the practice of nursing.

(f) Consulting and coordinating with other health care professionals in the management of health care.

Licensees were engaged in providing nursing services.

"Nursing diagnosis" means a clinical judgment, based on analysis of comprehensive assessment data, about a client's response to actual and potential health problems or life processes. Nursing diagnosis statements include the actual or potential problem, etiology or risk factors, and defining characteristics, if any.

"Nursing process" means applying problem-solving techniques that require technical and scientific knowledge, good judgment, and decision-making skills to assess, plan, implement, and evaluate a plan of care.

Ariz. Admin. Code R4-19-101.

Licensees hired their own company to obtain the assessment of their nurses.

C. In utilizing the nursing process to plan and implement nursing care for clients across the life-span, a RN shall:

1. Conduct a nursing assessment of a client in which the nurse:

A. Recognizes client characteristics that may affect the client's health status;

B. Gathers or reviews comprehensive subjective and objective data and detects changes or missing information;

C. Applies nursing knowledge in the integration of the biological, psychological, and social aspects of the client's condition; and

D. Demonstrates attentiveness by providing ongoing client surveillance and monitoring;

2. Use critical thinking and nursing judgment to analyze client assessment data to:

A. Make independent nursing decisions and formulate nursing diagnoses; and

B. Determine the clinical implications of client signs, symptoms, and changes, as either expected, unexpected, or emergent situations;

3. Based on assessment and analysis of client data, plan strategies of nursing care and nursing interventions in which the nurse;

- A. Identifies client needs and goals;
 - B. Formulates strategies to meet identified client needs and goals;
 - C. Modifies defined strategies to be consistent with the client's overall health care plan; and
 - D. Prioritizes strategies based on client needs and goals;
4. Provide nursing care within the scope of practice in which the nurse:
- A. Administers prescribed aspects of care including treatments, therapies, and medications;
 - B. Clarifies health care provider orders when needed.

R4-19-402. Standards Related to Registered Nurse Scope of Practice

At certain times, WLJ has kept a handyman on its staff to provide maintenance services to wards and/or protected persons at the direction of Nicole, the conservator. [Tr. 67:2–68:2.] The handyman's duties included coordinating and completing the work required to prepare wards' and/or protected persons' homes for sale and attending to emergency maintenance issues. [Tr. 67:6–17; Ex. 25 at 909.] In one case, Nicole, acting as conservator, directed WLJ's handyman to repair and paint the ward and/or protected person's house, services for which the handyman billed \$7,910.50 (94.1 hours of work). [Ex. 25 at 000909.] According to Jeannean, the services provided by WLJ's handyman were not fiduciary services. [Tr. 67:23–24.]

Nicole, as conservator, never substantively reviewed, questioned, or challenged any services Jeannean Sabatina provided as a guardian or care manager. [Ex. 315 at 009787:5–009788:1, 009798:12–009799:12.] Nicole, as conservator, and co-owner of WLJ, approved WLJ's invoices for the provision of non-fiduciary services. [Tr. 608:16–21.] Similarly, Jeannean, in at least one matter in which she

was serving as guardian and conservator of the individual, approved WLJ's invoices for the provision of non-fiduciary services. [Tr. 609:5-8.]

b. Mushkatel Robbins and Becker, PLLC ("MRB").

From 2012 to July 8, 2018, Nicole worked as a "1099 contract employee" for MRB. [Ex. 320; Tr. 75:9-16.] In that role, Nicole "provide[d] . . . support to [MRB's] attorneys . . . [on] elder care issues, accountings, guardian/conservatorship document analysis and general support." [Ex. 320.] Contracting with a service provider in which the fiduciary has an employment relationship creates the appearance of a conflict of interest. [Nicole Sabatina Testimony, Tr. 188:9-13.] Upon reading the concerns raised in the Division's complaint regarding Nicole's relationship with MRB, Nicole ended her employment relationship with MRB. [Tr. 1016:5-1017:12, 1018:6-8.]

While Nicole was an employee with MRB, MRB referred its clients and potential clients that sought fiduciary services to WLJ, among other fiduciaries. [Ex. 320; Tr. 76:4-8.] While Nicole was an employee for MRB, MRB represented Nicole in matters in which she was appointed as a conservator and Jeannean in matters in which Nicole was appointed guardian. [Tr. 75:17-76:3, 187:21-188:8.] In one matter, MRB referred a client to WLJ and later represented Nicole as conservator to the same after she was appointed as such. [Tr. 1021:15-18.] In another, a daughter sought legal advice from MRB regarding how to handle her mother's finances after

her mother had been scammed. Zachary Mushkatel advised she hire a person on his staff, Nicole Sabatina. [Tr. 505:24-507:11 and 507:1-18.]

As conservator, Nicole was responsible for approving the legal billings for legal services provided to the guardianship and/or conservatorship. [Tr. 619:16-24.] Although Nicole acknowledged that her job as conservator is "to look at the bills, [and] voice concerns if there are any," she instead relied on the "Rule 33 process" to determine whether MRB's fees were justified. [Tr. 188:14-23.] Under Arizona Rule of Probate Procedure 33, the court must approve an attorney's fees for his or her representation of a fiduciary if those fees are to be paid from the estate of a ward or protected person.

In one matter in which Jeannean and Nicole served as guardian and conservator, respectively, Zachary Mushkatel, attorney with MRB, represented a petitioner (the daughter of the ward) that had raised certain concerns regarding the fiduciaries' billing statement. [Ex. 331.] A hearing was held regarding the fiduciary fees and costs. [Ex. 331 at 010200.] Although Nicole was an employee of MRB at the time, she did not inform the court of this. [Tr. 1053:21-23.] Further, although the petitioner had raised concerns regarding Nicole's billing statement, Zachary Mushkatel did not file an objection. [Ex. 331 at 010220.]

In the Kimble matter, on April 12, 2017, Nicole informed Dennis Myers, the POA for Kimble on April 12, 2017 the "role of WLJ with Jannette (Kimble)." Myers

then told Kimble the truth that the Sabatinas intended to put her in a nursing home. Shortly thereafter, Nicole received a call from Mimi Moore at MRB notifying her that Kimble had arrived at their office with her POA to remove her as the alternate. MRB kept them waiting until at some point Mimi informed Nicole that Kimble had left because the "receptionist had taken too long to get back to her about an appointment." Nicole instructed MRB that two doctors had stated that she "cannot change her documents." [Ex. 250 at 006506.]

The conflicts in such an exchange are multiple, not the least of which calls into question why MRB would disclose to their employee the presence of someone trying to schedule an appointment. This casual interaction with professional responsibilities is concerning on multiple levels, including the sharing of medical information with Mimi Moore. Nicole billed the call from Ms. Moore to Kimble. Mr. Gobbato and Nicole spoke on the telephone after this encounter. [Id.]

The same day, Nicole drove to meet with Kimble and "explained our roles as Licensed Fiduciaries." The POA arrived and confronted her and stated he would see her in court. Nicole's response was to stand guard at the house while the locks were changed on the house and explain to a neighbor, "at length" explaining what she was doing. Nicole charged \$537.50 for this. [Id. at 006507.]

Based on the above findings, Licensees engaged in self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest impropriety in

violation of ACJA § 7-202(J)(2)(b)(1). They each failed to maintain independence from all service providers in violation of ACJA § 7-202(J)(2)(b)(2) and each provided non-fiduciary services to wards or protected persons through a closely related entity, WLJ, in violation of ACJA § 7-202(J)(2)(b)(3)(a).

Formal Charge 2. False and misleading budgets.

Jeannean and Nicole filed misleading or false Estate Budgets with the court by significantly understating the projected fiduciary fees and expenses in the initial estate budgets. Estate Budgets are important for transparency purposes, accountability, and sustainability of the estate. [Sheryll Prokop Testimony, Tr. 343:16-344:10.] The evidence is clear and: (1) the fiduciary billing records indicate Jeannean and Nicole issued checks to themselves prior to filing initial Estate Budgets; and (2) the judicially approved projected fiduciary fees and costs for the year were reached and realized within days or weeks of filing the initial estate budgets.

Arizona Rule of Probate Procedure 30.3(a) requires conservators to file an initial estate budget within ninety days of appointment. The fiduciary may not “knowingly” file an initial estate budget with the court that is “misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts.” ACJA § 7-202(J)(1)(c)(3).

During the Division's investigation, it reviewed the fiduciary fees and costs projected in the initial estate budgets prepared by Jeannean and Nicole, and filed by Nicole, in fourteen different cases. The Division concluded Jeannean and Nicole filed misleading or false initial estate budgets in ten of the fourteen cases. The Court reviewed the initial estate budgets filed in those ten cases:

a. PB2013-071060

On March 5, 2014, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$12,000 for the period of December 13, 2013 to September 30, 2014. [Ex. 153 at 004775.] Prior to filing the initial estate budget, fiduciary fees and costs paid for the period amounted to \$8,121.41. [Ex. 156 at 004911–12.] By April 14, 2014, fiduciary fees and costs paid for the period exceeded the amount projected in the initial estate budget, totaling \$13,160.91. [Ex. 156 at 004912.] By the end of the account period, the total fiduciary fees and costs paid was \$20,697.04, exceeding the amount projected for the period by \$8,697.04. [Ex. 156 at 004899.]

b. PB 2015-070041

On May 1, 2015, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$7,500 for the period of March 23, 2015 to December 31, 2015. [Ex. 74 at 002419.] Prior to filing the initial estate budget, fiduciary fees and costs paid for the period totaled \$3,079.88. [Ex. at 002562.] By

August 1, 2015, fiduciary fees and costs paid for the period exceeded the amount projected in the initial estate budget, totaling \$7,855.09. [Ex. 77 at 002562.] By the end of the account period, the total fiduciary fees and costs paid was \$21,260.42, exceeding the amount projected by \$13,760.42. [Ex. 77 at 002562.]

c. PB2015-002195

On July 16, 2015, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$20,000 for the period of May 12, 2015 to February 29, 2016. [Ex. 123 at 003430.] Prior to filing the initial estate budget, fiduciary fees and costs paid for the period totaled \$10,000. [Ex. 126 at 003461.] On August 4, 2015, \$10,052.57 was paid for the “[b]alance through July 15, 2015” of fiduciary fees and costs. [Ex. 126 at 003461.] Accordingly, it appears the fiduciary fees and costs *incurred* in the period prior to the filing of the initial estate budget exceeded the projected fiduciary fees and costs included in that budget. By the end of the accounting period, the total fiduciary fees and costs paid was \$83,912.53, exceeding the amount projected for the period by \$63,912.53. [Ex. 126 at 003461–62.]

d. PB2015-070937

On December 11, 2015, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$25,000 for the period of September 5, 2015 to June 30, 2016. [Ex. 49 at 001676.] By October 20, 2015, almost two months before

the initial estate budget was filed, fiduciary fees and costs paid for the period totaled \$24,220.07. [Ex. 54 at 001867.] On January 28, 2016, fiduciary fees and costs paid for the period exceeded the amount projected in the initial estate budget, totaling \$34,220.07. [Ex. 54 at 001867.] By the end of the accounting period, the total fiduciary fees and costs paid was \$82,249.12, exceeding the amount projected by \$57,249.12. [Ex. 54 at 001867.]

e. PB2015-070951

On February 4, 2016, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$21,000 for the period of November 5, 2015 to August 31, 2016. [Ex. 99 at 003058.] Prior to the filing of the initial estate budget, fiduciary fees and costs paid for the period totaled \$17,849.71. [Ex. 103 at 003170.] By March 31, 2016, fiduciary fees and costs paid for the period exceeded the amount projected in the initial estate budget, totaling \$21,187.03. [Ex. 103 at 003170.] By the end of the account period, the total fiduciary fees and costs paid was \$30,392.00, exceeding the amount projected for the period by \$9,392.00. [Ex. 103 at 003169–70.]

f. PB2016-050151

On June 21, 2016, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$35,000 for the period of March 22, 2016 to December 31, 2016. [Ex. 282 at 007448.] Prior to the filing of the initial estate

budget, fiduciary fees and costs paid for the period totaled \$24,075.59. [Ex. 285 at 00746.] By July 23, 2016, fiduciary fees and costs paid for the period exceeded the amount projected in the initial estate budget, totaling \$37,166.78. [Ex. 285 at 00746.] On September 22, 2016, Jeannean and Nicole filed an amended budget with projected fiduciary fees and costs of \$47,000. [Ex. 284.] The same day, a check for \$6,257.54 was issued to WLJ for fiduciary fees and costs, bringing the total amount paid in the period to \$49,342.05 and exceeding the amount projected for the period in the amended budget by \$2,342.05. [Ex. 285 at 00746.] By the end of the accounting period, the total fiduciary fees and costs paid in the period was \$58,589.46, exceeding the amount projected in the amended budget by \$11,589.46. [Ex. 285 00746-47.]

g. PB2016-050160

On September 15, 2016, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$25,000 for the period of June 28, 2016 to March 31, 2017. [Ex. 15 at 000604.] By August 23, 2016, prior to the filing of the initial estate budget, fiduciary fees and costs paid for the period totaled \$35,093.20, exceeding the amount projected for the period by \$10,093.20. [Ex. 20 at 000642.] By the end of the accounting period, the total fiduciary fees and costs paid in the period was \$70,185.41, exceeding the amount projected for the period by \$45,185.41. [Ex. 20 at 000642.]

h. PB2016-050493

On November 8, 2016, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$40,000 for the period of August 16, 2016 to May 31, 2017. [Ex. 30 at 001074.] Prior to the filing of the initial estate budget, the total fiduciary fees and costs paid for the period was \$29,377.39. [Ex. 39 at 001134.] As of November 21, 2016, the total fiduciary fees and costs paid in the period was \$39,938.06. [Ex. 39 at 001134.] By December 21, 2016, the total fiduciary fees and costs paid for the period exceeded the amount projected in the initial estate budget, totaling \$45,247.28. [Ex. 39 at 001134.] By the end of the accounting period, the total fiduciary fees and costs paid in the period was \$58,691.55, exceeding the amount projected by \$18,691.55. [Ex. 39 at 001134-35.]

i. PB2016-050366

On November 28, 2016, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$40,000 for the period of July 15, 2016 to April 30, 2017. [Ex. 3 at 000009.] By November 21, 2016, a week before the initial estate budget was filed, the total fiduciary fees and costs paid for the period was \$42,641.77, exceeding the amount projected for the period by \$2,641.77. [Ex. 6 at 000046.] By the end of the accounting period, the total fiduciary fees and costs paid in the period was \$56,260.27, exceeding the amount projected by \$16,260.27. [Ex. 6 at 000046.]

1. PB2016-050521

On May 30, 2017, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$5,000 for the period of January 18, 2017, to October 31, 2017. [Ex. 277 at 007233.] By the end of the accounting period, the total fiduciary fees and costs paid in the period was \$44,660.03, exceeding the approved budget by \$39,660.03. [Ex. 355 at 010463.]

In two of the fourteen cases the Division reviewed, the fiduciary fees and expenses paid in the accounting period exceeded the amount projected in the initial estate budget *before* the initial estate budget was filed with the court. These were obviously known information. In one of those cases, the fiduciary fees and expenses paid exceeded the amount projected in the initial estate budget twenty-three days prior to the filing of the initial estate budget. In a third case, it appears the fiduciary fees and expenses incurred for the period exceeded the amount projected in the initial estate budget the day before the initial estate budget was filed. Further, in a fourth case, fiduciary fees and expenses paid in the period exceeded the amount projected for the period in an amendment to the initial estate budget on the day the amendment was filed.

In five of the fourteen cases the Division reviewed, the fiduciary fees and expenses paid in the period exceeded the amount projected in the initial estate budget within three months of the initial estate budget being filed with the court.

Specifically, in each of the five cases, the amount projected in the initial estate budget was exceeded in forty days, ninety-two days, forty-eight days, fifty-six days, and forty-four days, respectively, after the initial estate budget was filed.

There is no evidence offered by the Sabatinas to explain how checks issued to WLJ or Nicole L. Sabatina, LLC for their own fiduciary fees and costs incurred prior to their filing of the estate budget did not constitute known information at the time. Ex. 357 at SAB-010612. Nicole testified that although her projections of fiduciary fees and expenses did not always account for fiduciary fees and expenses incurred in the period prior to the filing of the initial estate budget, her projections did account for what had been paid in fiduciary fees and expenses for the period prior to the filing of the initial estate budget:

In preparing the budgets, I looked at what was paid in fiduciary fees and did my very best, based on what I understood of the forms[,] to complete them with a . . . proper estimate or forecast for future expenses. . . . I would not always have looked at those incurred fees [Tr. 170:18–171:1.]

Jeannean Sabatina and Nicole Sabatina are mandated by ACJA § 7-202 to not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts. JPS, Stipulation 24.

Based on the foregoing findings, Jeannean and Nicole Sabatina filed misleading or false Estate Budgets in violation of ACJA § 7-202.

Formal Charge 3. False and misleading affidavits.

Jeannean and Nicole filed with the court misleading or false affidavits by declaring in their respective Affidavits of Persons to be Appointed Guardian and/or Conservator that they did not have a business interest in the provision of nursing services, even though WLJ provided those services for monetary gain at the time of filing. [Ex. 1 at SAB-0000002 (¶ 10); Ex. 2 at SAB-0000006 (¶ 10); Ex. 12 at SAB-000588 (¶ 10), Ex. 13 at SAB-000592 (¶ 10), Ex. 28 at SAB-001067 (¶ 10), Ex. 29 at SAB-001071 (¶ 10), Ex. 47 at SAB-001670 (¶ 15), Ex. 48 at SAB-001674 (¶ 15); Ex. 73 at SAB-002415 (¶ 15); Ex. 97 at SAB-003053 (¶ 15); Ex. 98 at SAB-003056 (¶ 15); Ex. 121 at SAB-003422 (¶ 11); Ex. 122 at SAB-003426 (¶ 11); Ex. 152 at SAB-004733 (¶ 15); Ex. 182 at SAB-005485 (¶ 15); Ex. 183 at SAB-005488 (¶ 15); Ex. 191 at SAB-005725 (¶ 15); Ex. 192 at SAB-005727 (¶ 15); Ex. 216 at SAB-006316 (¶ 15); Ex. 217 at SAB-006318 (¶ 15).]

Under Arizona Rule of Probate Procedure 20, “[b]efore the court appoints any person as a guardian or conservator, the person shall complete and file with the court the disclosure affidavit required by A.R.S. § 14-5106.” Pursuant to A.R.S. § 14-5106(A)(11), every proposed appointee must include in the disclosure affidavit “[w]hether or not the proposed appointee has an interest in any enterprise providing housing, health care or comfort care services to any individual, and, if so, the name and address of each such enterprise and the extent of each such interest.” The

fiduciary shall not “knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts.” ACJA § 7-202(J)(1)(c)(3).

Jeannean started WLJ in 2011. Since opening WLJ, Jeannean has provided wards with both geriatric care management services and fiduciary services. [Amended JPS, 3.] Nicole was added to WLJ as a member and owner on December 15, 2015. According to Nicole, WLJ provides guardian services, conservator services, probate and trust services, and certified geriatric care management. [Tr. 175:3–6, 178:13–25.] Today, Jeannean and Nicole each own a third of WLJ.

Between November 2013 and April 2017, Jeannean filed at least ten Affidavits of Person to be Appointed Guardian and/or Conservator. [Ex. 1; Ex. 13; Ex. 29; Ex. 47; Ex. 98; Ex. 122; Ex. 152; Ex. 183; Ex. 192; Ex. 216.] In five of those affidavits filed with the court between November 2013 and July 2016, Jeannean answered “true” to the following: “I have no interest in any business that provides housing, health care, nursing care, residential care, assisted living, home health services, or comfort care services to any individual.” [Ex. 1; Ex. 13; Ex. 29; Ex. 47; and Ex. 152.] In the remaining five affidavits, Jeannean answered “true” to the following (or a close variation thereof): “I have no interest in any business providing housing, health care, or comfort care services to any individual.” [Ex. 98; Ex. 122; Ex. 183; Ex. 192; Ex. 216.]

Between January 2015 and April 2017, Nicole filed at least ten Affidavits of Person to be Appointed Guardian and/or Conservator. [Ex. 2; Ex. 12; Ex. 28; Ex. 48; Ex. 73; Ex. 97; Ex. 121; Ex. 182; Ex. 191; Ex. 217.] In four of those affidavits, filed with the court between August 2015 and July 2016, Nicole answered “true” to the following: “I have no interest in any business that provides housing, health care, nursing care, residential care, assisted living, home health services, or comfort care services to any individual.” [Ex. 2; Ex. 12; Ex. 28; Ex. 48.] In the remaining six affidavits, Nicole answered “true” to the following (or a close variation thereof): “I have no interest in any business providing housing, health care, or comfort care services to any individual.” [Ex. 73; Ex. 97; Ex. 121; Ex. 182; Ex. 191; Ex. 217.]

WLJ, as part of its geriatric care management services, employed a full-time licensed practical nurse that provided the following services: reviewed medications; took vitals; obtained information about pain, discomfort, incontinence, appetite, and medical history; listened to bowel sounds; examined for bruises or skin tears; measured blood pressure and pulse; and made herself available to discuss dietary recommendations. [Tr. 41:20–42:20; 57:13–59:7; Ex. 76 at 002437.]

Sharon Quam, a licensed practical nurse, began working for Jeannean at Heartfelt Care in June 2009. [Ex. 346.] When Jeannean dissolved Heartfelt Care and started WLJ in 2011, Sharon continued to work for Jeannean at WLJ. [Ex. 346.] According to Sharon, prior to working for Heartfelt Care and WLJ, she had “been in

Nursing for [forty-eight] years and worked for some of the best Physicians and facilities." [Ex. 346.] Sharon described the work she performed for WLJ as "mainly hands on nursing services." [Ex. 346.] Sharon believed working with "someone like Jeannean[,] who shared [Sharon's] love for [working with the elderly population,] made the best for [WLJ's] 'patients/clients' from the time [Jeannean and Sharon] began with them on [WLJ's] service." [Ex. 346 (emphasis added).] After a forty-eight-year career in nursing, Sharon retired from WLJ in June 2016. [Ex. 346.]

Formal Charge 4. Failure to timely amend budgets.

The Rules of Probate Procedure are clear. Rule 30.2 mandates that a conservator, "disclose whether the annual expenses of the conservatorship exceed income and, if so, whether the assets available to the conservator less liabilities are sufficient to sustain the conservatorship for the duration of time the protected person needs care or fiduciary services." Budgets are critical to that analysis and require strict disclosure for the court to assure the safekeeping of the ward.

Both counsel and the fiduciary have a duty to undertake a cost-benefit analysis at the outset and throughout their representation to ensure that they provide needed services that further the protected person's best interests and do not waste funds or engage in excessive or unproductive activities.

In re Guardianship of Sleeth, 226 Ariz. 171, 175 (Ct. App. 2010).

The Division alleges that Jeannean and Nicole failed to timely file amended budgets and failed to seek judicial approval to exceed approved budgets, even

though Jeannean and Nicole should have reasonably learned of cost overruns during monthly case reviews and audits.

Under Arizona Rule of Probate Procedure 30.3(A), "the conservator shall file a budget [with the court] not later than the date the inventory is due and thereafter with each conservator's account." Upon doing so, "the conservator must provide a copy of the budget to all persons entitled to notice of the conservator's accounts pursuant to [A.R.S. § 14-5419(C)]." Ariz. R. Prob. P. 30.3(C). Under Rule 30.3(f), "the conservator shall file an amendment to the budget and provide notice in the same manner as the initial budget within thirty days after reasonably projecting that the expenditures for any specific category will exceed the approved budget by a threshold . . . set forth in the instructions for the conservator's budget." Pursuant to those instructions, the threshold is ten percent or \$2,000, whichever is greater. [Ex. 325 at 010142.]

"An interested person may file a written objection to the budget or amendment within fourteen days after the filing date of the budget or amendment." Ariz. R. Prob. P. 30.3(E). "If an interested person fails to object to a budget item within fourteen days after the filing date of the budget or amendment, the budget item shall be deemed presumptively reasonable at the time of the conservator's account." Ariz. R. Prob. P. 30.3(E). Lastly, "[o]n the court's own motion or upon the filing of a written

objection, the court shall approve, disapprove or modify the budget to further the protected person's best interest." Ariz. R. Prob P. 30.3(F).

Under ACJA § 7-202(J)(1)(c)(2), the fiduciary shall "[p]rovide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration." Moreover, the fiduciary "shall not act outside the authority granted by the court and shall seek direction from the court as necessary and court authorization for actions that are subject to court approval." ACJA § 2-202(J)(1)(b).

The Division reviewed the approved estate budget for the first account period in fourteen cases. The Division concluded Jeannean and Nicole failed to timely file an amended budget in ten of the fourteen cases the Division reviewed. The Court has reviewed each of those ten cases:

a. PB2013-071060

On March 5, 2014, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$12,000 for the period of December 13, 2013 to September 30, 2014. [Ex. 153 at 004775.] Accordingly, Jeannean and Nicole were required to file an amended budget within thirty days after reasonably projecting that the expenditures for fiduciary fees and costs would exceed the approved budget by

\$2,000. On May 20, 2014, expenditures for fiduciary fees and costs amounted to \$15,712.74, exceeding the approved budget by \$3,712.74. [Ex. 156 at 004911–12.] Jeannean and Nicole filed an amended budget, along with the first accounting, on January 21, 2015. [Ex. 157.] At the end of the accounting period, total fiduciary fees and costs were \$20,697.04, exceeding the amount projected for the period by \$8,697.04. [Ex. 156 at 004899.]

b. PB 2015-070041

On May 1, 2015, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$7,500 for the period of March 23, 2015 to December 31, 2015. [Ex. 74 at 002419.] Accordingly, Jeannean and Nicole were required to file an amended budget within thirty days after reasonably projecting that the expenditures for fiduciary fees and costs would exceed the approved budget by \$2,000. On September 14, 2015, expenditures for fiduciary fees and costs amounted to \$12,855.09, exceeding the approved budget by \$5,355.09. [Ex. 77 at 002562.] An amended budget was not filed for the account period. By the end of the accounting period, the total fiduciary fees and costs paid was \$21,260.42, exceeding the amount projected by \$13,760.42. [Ex. 77 at 002562.]

c. PB2015-002195

On July 16, 2015, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$20,000 for the period of May 12, 2015 to

February 29, 2016. [Ex. 123 at 003430.] Accordingly, Jeannean and Nicole were required to file an amended budget within thirty days after reasonably projecting that the expenditures for fiduciary fees and costs would exceed the approved budget by \$2,000. On August 21, 2015, expenditures for fiduciary fees and costs amounted to \$27,615.89, exceeding the approved budget by \$7,615.89. [Ex. 126 at 003461.] Jeannean and Nicole filed an amended budget on January 19, 2017. [Ex. 130.] By the end of the accounting period, the total fiduciary fees and costs paid was \$83,912.53, exceeding the amount projected for the period by \$63,912.53. [Ex. 126 at 003461-62.]

d. PB2015-070937

On December 11, 2015, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$25,000 for the period of September 5, 2015 to June 30, 2016. [Ex. 49 at 001676.] Accordingly, Jeannean and Nicole were required to file an amended budget within thirty days after reasonably projecting that the expenditures for fiduciary fees and costs would exceed the approved budget by \$2,500. On January 28, 2016, expenditures for fiduciary fees and costs amounted to \$34,220.07, exceeding the approved budget by \$9,220.07. [Ex. 54 at 001867.] An amended budget was not filed for the accounting period. By the end of the accounting period, the total fiduciary fees and costs paid was \$82,249.12, exceeding the amount projected by \$57,249.12. [Ex. 54 at 001867.]

e. PB2015-070951

On February 4, 2016, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$21,000 for the period of November 5, 2015 to August 31, 2016. [Ex. 99 at 003058.] Accordingly, Jeannean and Nicole were required to file an amended budget within thirty days after reasonably projecting that the expenditures for fiduciary fees and costs would exceed the approved budget by \$2,100. On April 22, 2016, expenditures for fiduciary fees and costs amounted to \$23,345.96, exceeding the approved budget by \$2,345.96. [Ex. 103 at 003169–70.] An amended budget was not filed for the accounting period. By the end of the accounting period, the total fiduciary fees and costs paid was \$30,392.00, exceeding the amount projected for the period by \$9,392.00. [Ex. 103 at 003169–70.]

f. PB2016-050151

On June 21, 2016, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$35,000 for the period of March 22, 2016 to December 31, 2016. [Ex. 282 at 007448.] Accordingly, Jeannean and Nicole were required to file an amended budget within thirty days after reasonably projecting that the expenditures for fiduciary fees and costs would exceed the approved budget by \$3,500. On August 22, 2016, expenditures for fiduciary fees and costs amounted to \$43,084.51, exceeding the approved budget by \$8,084.51. [Ex. 285 at 00746.]

In the same case, on September 22, 2016, Jeannean and Nicole filed an amended budget with projected fiduciary fees and costs of \$47,000. [Ex. 284.] Accordingly, Jeannean and Nicole were required to file an amended budget within thirty days after reasonably projecting that the expenditures for fiduciary fees and costs would exceed the approved budget by \$4,700. On November 21, 2016, expenditures for fiduciary fees and costs amounted to \$56,486.65, exceeding the approved budget by \$9,486.65. [Ex. 285 00746–47.] A second amended budget was not filed for the account period. By the end of the accounting period, the total fiduciary fees and costs paid in the period was \$58,589.46, exceeding the approved budget by \$11,589.46. [Ex. 285 00746–47.]

g. PB2016-050160

On September 15, 2016, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$25,000 for the period of June 28, 2016 to March 31, 2017. [Ex. 15 at 000604.] Accordingly, Jeannean and Nicole were required to file an amended budget within thirty days after reasonably projecting that the expenditures for fiduciary fees and costs would exceed the approved budget by \$2,500. On August 23, 2016, expenditures for fiduciary fees and costs amounted to \$35,093.20, exceeding the approved budget by \$10,093.20. [Ex. 20 at 000642.] Jeannean and Nicole filed an amended budget, along with the first accounting, on June 20, 2017. [Ex. 19 at 000629–30.] By the end of the accounting period, the total

fiduciary fees and costs paid in the period was \$70,185.41, exceeding the approved budget by \$45,185.41. [Ex. 20 at 000642.]

h. PB2016-050493

On November 8, 2016, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$40,000 for the period of August 16, 2016 to May 31, 2017. [Ex. 30 at 001074.] Accordingly, Jeannean and Nicole were required to file an amended budget within thirty days after reasonably projecting that the expenditures for fiduciary fees and costs would exceed the approved budget by \$4,000. On December 21, 2016, expenditures for fiduciary fees and costs amounted to \$47,282.98, exceeding the approved budget by \$7,282.98. [Ex. 39 at 001134.] Jeannean and Nicole filed an amended budget on May 16, 2017, [Ex. 34], and a second on August 9, 2017, [Ex. 38]. By the end of the accounting period, the total fiduciary fees and costs paid in the period was \$58,691.55, exceeding the approved budget by \$18,691.55. [Ex. 39 at 001134–35.]

i. PB2016-050366

On November 28, 2016, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$40,000 for the period of July 15, 2016, to April 30, 2017. [Ex. 3 at 000009.] Accordingly, Jeannean and Nicole were required to file an amended budget within thirty days after reasonably projecting that the expenditures for fiduciary fees and costs would exceed the approved budget by

\$4,000. On December 21, 2016, expenditures for fiduciary fees and costs amounted to \$44,786.55, exceeding the approved budget by \$4,786.55. [Ex. 6 at 000046.] An amended budget was not filed for the accounting period. By the end of the accounting period, the total fiduciary fees and costs paid in the period was \$56,260.27, exceeding the approved budget by \$16,260.27. [Ex. 6 at 000046.]

j. PB2016-050521

On May 30, 2017, Jeannean and Nicole filed an initial estate budget that projected fiduciary fees and costs of \$5,000 for the period of January 18, 2017, to October 31, 2017. [Ex. 277 at 007233.] Accordingly, Jeannean and Nicole were required to file an amended budget within thirty days after reasonably projecting that the expenditures for fiduciary fees and costs would exceed the approved budget by \$2,000. By the end of the accounting period, the total fiduciary fees and costs paid in the period was \$44,660.03, exceeding the approved budget by \$39,660.03. [Ex. 355 at 010463.] An amended budget was not filed for the accounting period.

In sum, Jeannean and Nicole failed to file an amended budget in five of the ten cases described above, despite exceeding the approved budget by the greater of ten percent or \$2000. In three of the cases, Jeannean and Nicole filed an amended budget after the account period had closed, and in each of those cases, they filed the amended budget at least eight months after exceeding the approved budget for fiduciary fees and costs by the greater of ten percent or \$2,000.

After exceeding the approved budget for fiduciary fees and costs by the greater of ten percent or \$2,000.00, Jeannean and Nicole filed an amended budget before the close of the accounting period in only two cases. In one case, however, Jeannean and Nicole failed to file a second amended budget after exceeding the projected fiduciary fees and costs in the amended budget by the greater of ten percent or \$2,000.00. In the other case, Jeannean and Nicole filed the amended budget nearly five months after fiduciary fees and costs exceeded those approved in the budget by the greater of ten percent or \$2,000.00. Moreover, the amended budget did not account for the total fiduciary fees and costs paid in the period at the time the amended budget was filed.

During his testimony Mr. Scaringelli was asked, "Ultimately is it the Sabatinas' responsibility to make sure that the budgets are filed timely?" Rather than answer the question he acknowledged that as the attorney for Licensees that he held some responsibility to "get it filed on their behalf" He then covered that acknowledgement by stating, "but until I know that they have exceeded the budget, I can't know to tell them to file it. So, I rely on them to tell me when they have exceeded their budgeted amount." [Tr. 945:15-946:1.] When directed to answer the question as posed, he acknowledged, "I believe it's their responsibility on amended budgets to let me know that they've exceeded their budget, so we can file an amended budget. Yes, it's their responsibility." [Id. at 946:11-16.] It was

unquestionably their responsibility and their repeated failure to do so evidences an intent and disregard of the Court, their obligations, their ward, and any interested party. It precluded any analysis of the ultimate purpose Probate Rule 30.2; to know "whether the assets available to the conservator less liabilities are sufficient to sustain the conservatorship for the duration of time the protected person needs care or fiduciary services." This was done to benefit themselves at the expense of the ward.

Formal Charge 5. Violated Statewide Fee Guidelines

The Rules of Probate Procedure in Arizona govern procedures in all probate proceedings, including guardianships and conservatorships. Rule 1 requires that the rules are to "be construed and enforced to ensure the prompt, efficient, and just resolution of probate proceedings." Probate Rule 10.1 requires the fiduciary to "prudently manage costs, preserve the assets of the ward or protected person. . . ." It further requires that any fiduciary must "protect against incurring any costs that exceed probable benefits to the ward [or] protected person" Probate Rule 33 is entitled "Compensation for Fiduciaries and Attorneys; Statewide Fee Guidelines." It requires fiduciaries that intend to be compensated by the estate of a ward or protected person to give written notice of the basis for any compensation. A petition that requests approval of compensation for a fiduciary must include detailed billing statements of services provided and an itemization of costs for which

reimbursement is sought. Arizona case law has long made clear that fiduciaries are duty bound to their wards regarding their billings. The rules and law in Arizona,

makes clear that the courts must consider more than merely the time expended when fees will be levied against the estate of a protected person. Both counsel and the fiduciary have a duty to undertake a cost-benefit analysis at the outset and throughout their representation to ensure that they provide needed services that further the protected person's best interests and do not waste funds or engage in excessive or unproductive activities.

In re Guardianship of Sleeth, 226 Ariz. 171, 175 (Ct. App. 2010)

The Guidelines apply to any Court-appointed fiduciaries, specially guardians, and conservators, including but limited to the Licensees in these matters. ACJA § 3-303(B). The Comment to Probate Rule 33 clarifies that multiple factors are to be analyzed by the Court in the consideration of a fee application. In Arizona every person serving in a fiduciary role "are only entitled to reasonable fees, the fiduciary and the fiduciary's attorney must engage in a cost-benefit analysis at all points of the representation to determine if the services provided are in the ward or protected person's best interests." See Claim of compensation, 12 Ariz. Prac., Estate Planning and Probate Handbook § 6:8. Every fiduciary has this ethical duty to not waste funds or engage in excessive or unproductive activities.

Probate Rule 33(F) requires that the superior court follow the Guidelines when determining reasonable compensation. The Guidelines listed in the ACJA apply to all court-appointed fiduciaries. ACJA § 3-303(B)(2). Their use by all such

fiduciaries is "mandatory." ACJA § 3-303(C). The Guidelines determine the methodology of billing and are followed by the court in determining reasonable compensation for such fiduciaries. Their application and use by fiduciaries are mandatory when submitting fee statements to the Court or requesting payment by the Court or approval of their fees by the Court. ACJA § 3-303(B) and (C).

The Guidelines are important because they protect the ward and go to the prudent management of costs. A.R.S. § 14-5109(D) puts "the burden of proving the reasonableness and necessity of compensation and expenses sought on the person seeking it. "Compensation paid from an estate to a guardian, [or] conservator must be reasonable and necessary." A.R.S. § 14-5109(C).

Fiduciary fees and costs are also part of the prudently managed costs and go to the sustainability of the estate. Sheryll Prokop Testimony, Confidential Tr. 398:9-12. Nicole Sabatina agreed with this when she testified that all services provided by WLJ are subject to the Arizona Statewide Fee Guidelines. Tr. 246:2-3. In her interview with CLD, Jeannean Sabatina stated that she is aware of the fee Guidelines and is trying to follow them. Ex. 316 at SAB-009996-7, 115:21-116:2..

Notwithstanding, Nicole Sabatina testified that she relies on the Rule 33 court approval, rather than her own review to determine what is justified. [Nicole Sabatina Testimony, Tr. 189:7-9.] If that were true, then anytime there was a lack of court approval, the same type billing would never be seen again unless there was an intent

to bill that which not justified. The evidentiary record a pattern of conduct of billing contrary to the Guidelines.

This methodology assured much overbilling. Two examples stand out and are repeated later in this report. By the time of the hearing, Attorney Lawrence Scaringelli, had worked with Licensees for approximately the prior four years. [Scaringelli Testimony, Tr. 912:21-913:9.] His made his view clear that the guardian should be able to charge their full fee for even the most mundane task that another person, at a much lesser cost could obtain. He stated as an example that if a dentist informed the guardian that the ward needed a toothbrush and toothpaste, "now does the does the guardian now need to take them to the store to buy all those things? Well, sure, because who else is going to do it?" [Id. at 932:9-14.] This view maximized the cost to the ward.

In turn, Jeannean Sabatina in a case later discussed notified the family that any questions they had regarding the Greens' inability to access a telephone or computer or their plan of care should be directed to attorney Larry Scaringelli and he would invoice the family member for the contact. [Sealed Ex. 39 at SAB-001241.] The appearance is clear. They each maximized the profit to themselves at the expense of the ward or the family of the ward.

Probate Rule 33 places a duty upon the Superior Court Judge to use the Guidelines when determining reasonable compensation. But the approval of any

judge has no preclusive effect on the Board. There are multiple reasons for this. In none of the billings which are part of the evidentiary record in this proceeding is there a request, formally or informally, that the judge rule on whether an individual billing is justified or not. It is an overall review based on the information given. Additionally, the ruling of the judge cannot absolve fiduciaries from oversight by the Board regarding the required adherence to the ACJA. Claim preclusion, as traditionally applied in civil litigation, means that “a final judgment on the merits in a prior suit involving the same parties or their privies bars a second suit based on the same claim.” *Dressler v. Morrison*, 212 Ariz. 279, 282, ¶ 15 (2006).

Regardless, “The doctrines of preclusion ... should be flexible and must give way when their mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies. Citations omitted, *Lawrence T. v. Dep’t of Child Safety*, 246 Ariz. 260 (Ct. App. 2019). The social policy is clear that it is the ward that is to be protected, not the profit margin for professionals in Title 14 proceedings. In ACJA § 3-303(B), “the term professional applies to licensed and unlicensed court-appointed fiduciaries, guardians ad litem and attorneys.”

The Division alleges that Licensees failed to comply with the Guidelines, despite repeated notices by the Court in at least the following ways: (1) charging the

estate for excessive visits to wards/vulnerable persons; and (2) charging rates disproportionate to tasks performed.

The Division reviewed case files of Licensees to determine adherence to the fee Guidelines. Those files included "various court accountants' reports and recommendations, . . . minute entries and orders issued by the Court, and fiduciary fee statements as filed by Jeannean & Nicole."

By the time of the hearing, attorney Lawrence F. Scaringelli, had worked with Licensees for approximately the prior four years. [Scaringelli Testimony Tr. 912:21-913:9.] He testified that he personally observed the concern of Judge Moskowitz because he couldn't decipher the billings of Licensees because they were "confusing because everything was lumped together. And there was no breakdown of it." [Id. at 918:21-919:2.] As a result, he changed their billing system and set up a new billing system to make more logical sense for someone reviewing it. [Id. at 919:3-9.] The changes were prior to the case in front of Commissioner Russell and the Kimble case. [Id. at 920:10-14.]

That these were violated with intent is evident from the record and in the methodologies, which were used. As discussed in Charge 3 above, in the affidavits which they mandated to file with the court, they intentionally reported they did not have a business interest in WLJ. The subterfuge assured the reviewing judge would not recognize that it was the Licensees who were doing the personal visits but by the

use of the alternate entity WLJ. They also attempted to evade the requirements through lump billing.

Mr. Scaringelli testified that he believed, "in terms of historic practice, care management services are billable under the statewide fee guidelines." [Tr. 922:22-25.] He believes the monthly visit is "care management" by the licensee under the Guidelines. He also believes taking the ward to a medical appointment is also "care management." [Id. at 923:6-11.] He was counsel for Licensees when Commissioner Russell, after the changes in Licensees billing practices were implemented, made multiple findings regarding improper billings.

There were some things that were overbilled, some staff members that probably shouldn't have been billed, which were some of the things that we addressed going forward. There were some, you know, it's like what we typically call, as attorneys, secretarial work that was being billed that probably shouldn't have been billed. And some other things that were just, you know, just bills appeared to be excessive based on what was done in the case. And I did speak to Nicole about that on more than one occasion, and we talked about fixing that issue and reducing the billing and certain people shouldn't bill and how to handle what needs to be done with the Court and that reduction on Petro. [Id. at 927:18-928:6.]

These failings were more than negligent as they always benefited Licensees. The charges identify two other areas that were violative of the Guidelines.

a. Excessive personal visits.

Common fiduciary services in a routine guardianship or conservatorship engagement include "[o]ne routine personal visit per month by the fiduciary to the ward or protected person." ACJA § 3-303(D)(3)(c)(3). If the fiduciary visits the ward or protected person more than once in a month, the fiduciary must provide a reasonable explanation for exceeding these services. ACJA § 3-303(D)(3)(c).

That these were violated with intent is evident from the record and in the methodologies used. As discussed in Charge 3 above, in the affidavits which the Sabatinas were mandated to file with the court, they intentionally reported they did not have a business interest in WLJ. The subterfuge assured the reviewing judge would not recognize that it was the Licensees who were doing the personal visits but by the use of the alternate entity WLJ. They also attempted to evade the requirements through lump billing.

Mr. Scaringelli testified that he believed, "in terms of historic practice, care management services are billable under the statewide fee guidelines." [Tr. 922:22-25.] He believes the monthly visit is "care management" by the licensee under the Guidelines.

Despite being notified of violations in April 2015, prior to the change in their billing practices implemented by Mr. Scaringelli, they were again notified by the court in November 2016 (twice), May 2017, September 2017, October 2017, November 2017, and February 2018, they had improperly exceeded the number of recommended monthly visits to a ward or protected person. This is a clear pattern that is reflective of both intent and disregard for the Guidelines, the Court, and more importantly, their duty to the ward. [Ex. 59; Ex. 111; Ex. 128; Ex. 143; Ex. 158; Ex. 169; Ex. 198; and Ex. 207.]

In one case, on November 1, 2016, the court found “the Conservator’s practice of visiting the Protected Person more than once per month and often more than once per week was not necessary or reasonable.” [Ex. 169 at 005147.] Subsequently, the court rejected the fees charged for thirty (30) visits to the protected person, which totaled \$1,878.50. [Ex. 169 at 005147.] On another occasion, the court found instances in which there were multiple visits made by the fiduciary and/or their staff in the same day. [Ex. 158 at 004943.] In a different case, the court noted that in “some instances two individuals made a visit together with both of them billing the Estate.” [Ex. 128 at 003893.]

Moreover, the conduct was repetitive and in flagrant disregard of the clear notice given by the court that the billing was in numerous cases, unjustified. Licensees knew this as they “relied” on such court action to determine what was

“justified.” [Nicole Sabatina Testimony, Tr. 189:7-9.] They each knew of their individual duty to adhere to the Guidelines and refused to in disregard of their clients to benefit themselves.

b. Charging rates disproportionate to the tasks performed.

Under ACJA § 3-303(D)(2)(g), “[t]he hourly rate charged for any given task shall be at the authorized rate, commensurate with the task performed, regardless of whom actually performed the work, but clerical and secretarial activities are not separately billable from the Professional.” Specifically, “[a] fiduciary may only bill a fiduciary rate when performing services that require the skill level of the fiduciary; a companion rate when performing companion services; a bookkeeper rate when performing bookkeeping and bill-paying services for a client; and shall not charge when performing secretarial or clerical services, for example.” ACJA § 3-303(D)(2)(g)(2).

In PB2013-071060, on November 1, 2016, the court lamented the “Conservator’s practice of charging the full fiduciary rate of \$105.00 per hour for accompanying the Protected Person on visits to the doctor.” [Ex. 169 at 005147.] Although eventually the conservator arranged for in-house treatment of the protected person’s routine medical needs, the court could not understand why the conservator hadn’t done this at the start of the account period. [Ex. 169 at 005147.] As a result, the court rejected \$665.00 in fees. [Ex. 169 at 005147.]

In PB2015-002195, on November 7, 2016, the court accountant noted that frequently the full fiduciary rate was charged to deliver “things” to the protected person’s home. [Ex. 128 at 003893.] Additionally, the court accountant described an instance in which, depending on who performed the task, four different rates (\$115, \$95, \$85, and \$65) were charged to sort the book collection of a protected person for distribution to charity and family members. [Ex. 128 at 003893.] According to the accountant, other and similar examples of fee guideline violations would “become evident from a review of the fee statement.” [Ex. 128 at 003893.]

In PB2014-071019, on February 23, 2017, the court accountant noted that the full fiduciary rate was charged for the following services: shopping services; moving services; and pickup and delivery services. [Ex. 185 at 005601.] Additionally, one day on which Jeannean performed pickup and delivery services for the ward, charging the full fiduciary rate, Jeannean’s assistant, separately, performed pickup and delivery services for the same ward. [Ex. 185 at 005601.]

In PB2016-070766, on May 25, 2017, the court accountant found that Jeannean charged the full professional rate to accompany the protected person to routine dental and other medical exams. [Ex. 207 at 006087.] Additionally, Nicole charged the protected person the full professional rate to perform tasks properly reserved to a bookkeeper. [Ex. 207 at 006087–88.] Indeed, in certain instances Nicole delegated these tasks to others that charged a bookkeeper rate to complete

them, demonstrating that Nicole understood that the tasks did not require the skill level of a fiduciary. [Ex. 207 at 006087–88.]

In PB2015-070951, on November 17, 2017, the court accountant noted the full fiduciary rate was charged for the following services: certain bookkeeping functions [Ex. 59 at 002006–7]; deposit, withdrawal, and delivery of cash to the protected person [Ex. 59 at 002006–7]; attending a routine medical visit with the protected person [Ex. 59 at 002008]; accompanying the protected person during a meal [Ex. 59 at 002009]; and helping the protected person pack and move to a new facility [Ex. 59 at 002009]. In each of these instances, the rate charged was not commensurate with the service performed. As a result, the accountant recommended the court reject \$2,745.00 in fees.

In PB2016-071488, on February 13, 2018, a court accountant found, again, that the full fiduciary rate was charged for “various” bookkeeping functions and to deposit cash of the protected person. [Ex. 198 at 005905.]

c. Miscellaneous Violations.

Under ACJA § 3-303(D)(2)(g)(2), “[a] fiduciary . . . shall not charge when performing secretarial or clerical services.” Jeannean and Nicole consistently charged their wards a “Records Management” fee. [Ex. 21 at 000829; Ex. 25 at 000909; Ex. 40 at 001312; Ex. 59 at 002007, 002009; Ex. 87 at 003002; Ex. 95 at 003047; Ex. 111 at 003302; Ex. 207 at 006088; Ex. 287 at 007721–22.] The records

management fee included updating/maintaining client information, making photocopies, sending faxes, and recovering postage expenses. [Ex. 14 at 000600.] Although a court accountant made Jeannean and Nicole aware on June 14, 2017, that their records management fee was a clerical or secretarial charge [Ex. 287 at 007721-22]—and thus prohibited under the fee Guidelines—Jeannean and Nicole continued to bill wards a records management fee until October 2017, [Ex. 327 at 010172].

The Sabatinas failed to follow and were made aware of their failure to follow ACJA § 3-303(D)(2)(g)(2) in multiple cases by various CARRs and minute entries. [Ex. 25 at SAB-000909; Tr.434:11-435:4; Ex. 59 at SAB-002006-9; Tr. 413:16-414:7; Tr. 415:13-15; Ex. 95 at SAB-003046; Ex. 111 at SAB-003301; Ex. 128 at SAB-003892-93; Tr. 214:9-11; Ex. 143 at SAB-004353-54; Tr. 418:23-421:2 Tr. 421:6-22; Ex. 169 at SAB-005147; Ex. 185 at SAB-005601; Ex. 189 at SAB-005718-19; Ex. 198 at SAB-005905-10; Tr. 400:16-403:10; Tr. 408:8-409:23; Tr. 410:2-411:19; Ex. 207 at SAB-006087-88.]

Under ACJA § 3-303(D)(3)(e), each fiduciary “shall not bill for more than one person to attend hearings, depositions, and other court proceedings on behalf of an Estate, absent good cause.” Jeannean and Nicole failed to abide by § 3-303(D)(3)(e) in multiple cases. [Ex. 25 at 000908; Ex. 40 at 001313; Ex. 111 at 003301; Ex. 185 at 005601; Ex. 189 at 005719; Ex. 198 at 005905.]

Under ACJA § 3-303(D)(2)(d), “[n]ecessary travel time and waiting time may be billed at 100% of the normal hourly rate, except for time spent on other billable activity; travel time and waiting time are not necessary when the service can be more efficiently rendered by correspondence or electronic communication, for example, telephonic court hearings.” Jeannean and Nicole failed to abide by ACJA § 3-303(D)(2)(d). [Ex. 198 at 005906–09; Ex. 207 at 006088.] For example, in PB2016-070766, the court accountant noted that Nicole charged for several trips to an assisted living facility and a storage facility in order to deliver payment for these services. Because Nicole could have used the U.S. Postal Service to deliver these payments, the accountant recommended the court reject the fees charged for travel time to these facilities. [Ex. 207 at 006088.]

Under ACJA § 3-303(D)(3)(c)(4), five hours per year is a reasonable amount of time for a conservator to spend preparing his or her account and budget. In one case, however, Nicole billed the ward thirty-one hours to prepare the account and budget. [Ex. 149 at 004562.] In another case, Nicole and her staff billed the ward 44.7 hours for accounting related tasks. [Ex. 356 at 010527.]

Under ACJA § 3-303(D)(2)(k), “[t]ime and expenses to correct or mitigate errors caused by the professional, or their staff, are not billable to the Estate.” Yet, in one case, after billing \$46.00 for signing a petition and letters, Jeannean later

billed the ward \$11.50 for a phone call due to a missed signature on one of the documents. [Ex. 198 at 005910.]

Under ACJA § 3-303(D)(2)(c), block billing is prohibited. Numerous instances of block billing exist in Jeannean and Nicole's billing records. [Ex. 356 at 010523, 010581.] In one instance, a court commissioner communicated his concerns to Jeannean and Nicole regarding their use of block billing. [Ex. 25 at 000907-08.]

Formal Charge 6. Restricted contact.

ACJA § 7-202(J)(3) requires that "[t]he fiduciary shall exercise extreme care and diligence when making decision on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance." ACJA § 7-202(J)(3)(a) requires that "[t]he fiduciary shall make all reasonable efforts to determine the preferences of the ward or protected person, both past and current, regarding all decisions the fiduciary is empowered to make."

ACJA § 7-202(J)(3)(b) requires that "[t]he fiduciary shall make decisions in accordance with the determined preferences of the ward or protected person, past or current, in all instances except when the fiduciary is reasonably certain the decision will result in substantial harm." ACJA § 7-202(J)(4) requires that "[t]he fiduciary acting as guardian shall assume legal custody of the ward and shall ensure that the ward resides in the least restrictive environment available."

ACJA § 7-202(J)(4)(e) requires that “[t]he fiduciary shall not remove the ward from the home of the ward or separate the ward from family and friends unless this removal is necessary to prevent substantial harm or because of financial constraints. The fiduciary shall make every reasonable effort to ensure the ward resides at home or in a community setting.”

A.R.S. § 46-456. “A person who is in a position of trust and confidence to a vulnerable adult shall use the vulnerable adult's assets solely for the benefit of the vulnerable adult and not for the benefit of the person who is in the position of trust and confidence to the vulnerable adult”

Under that law, once persons, such as Licensees occupied a “position of trust or confidence with regard to an incapacitated or vulnerable adult, the person in the position of trust and confidence is required to act for the benefit of the vulnerable adult to the same extent as a trustee under Arizona law.” *In re Estate of Newman*, 219 Ariz. 260, 269–70, (Ct. App. 2008), as amended (July 17, 2008). Internal quotations and citations omitted.

Knowledge of the law and their duties

Jeannean Sabatina has been a licensed fiduciary since 2009. [Jeannean Sabatina Testimony, Tr. 26:15-17; Ex. 356 at SAB-010481.] In her April 22, 2008 application for licensure as a fiduciary and in all renewal applications, Jeannean Sabatina represented that she has read, reviewed, and agreed to abide by Arizona

Code of Judicial Administration ("ACJA") §§ 7-201 and 7-202, applicable to licensed fiduciaries. [JPS 1.] Nicole Sabatina obtained her fiduciary license in 2012. [Nicole Sabatina Testimony, Tr. 163:25-164:2.] In her March 9, 2012 application for licensure as a fiduciary and in all renewal applications, Nicole Sabatina represented that she has read, reviewed, and agreed to abide by ACJA §§ 7-201 and 7-202, applicable to licensed fiduciaries. [JPS 2.]

Licensees are experienced fiduciaries and know that the fiduciary statutes and ACJA require that wards be placed in the least restrictive setting for the ward's needs. [Jeannean Sabatina Testimony, Tr. 76:9-20.] As licensed fiduciaries, Jeannean Sabatina and Nicole Sabatina are mandated to perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders and the ACJA. They refused to perform and discharge their obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders and the ACJA.

By its' clear language and as a matter of law, the ACJA prohibits guardians from separating wards from their family or friends unless there is substantial harm to the ward from their contact. In interpreting and applying these provisions of the ACJA, the hearing officer declines to engage in any kind of "narrow construction" of these provisions that would "thwart" the ACJA goal of protecting vulnerable

adults. *Wyatt*, 235 Ariz. at 141 ¶ 13. *Delgado v. Manor Care of Tucson AZ, LLC*, 242 Ariz. 309, 313, 395 P.3d 698, 702 (2017).

This violation is epitomized by Jannette Kimble above. [See pp. 3-43.]

Anna McClary

Sheila Clark is Anna McClary's daughter, co-guardian, and co-conservator. [Sheila Clark Testimony, Tr. 505:17-21.] Sheila Clark first met Nicole Sabatina in the Fall of 2014, when Sheila Clark was seeking legal advice from Zachary Mushkatel of MRB about how to handle her mother's finances after she had been scammed. [Id. at Tr. 505:24-507:11.]

Zachary Mushkatel advised Sheila Clark that she needed a conservator and possibly a guardian to help clean up her mother's finances. He told her he had a person on staff that could help her. The person on staff was Nicole Sabatina. Sheila Clark Testimony, Tr. 507:1-13. Sheila Clark briefly met with Nicole Sabatina at the MRB law offices and set up an appointment to meet Jeannean Sabatina at the WLJ office approximately one to two weeks later. [Id. at Tr. 507:7-508:2.]

According to Jeannean, Anna McClary hired WLJ to provide care management services. [Jeannean Sabatina Testimony, Tr. 127:22-128:4; Sealed Ex. 301 at SAB-008589.] Sheila Clark understood that her mother had hired WLJ to clean up her finances after she had been scammed. [Sheila Clark Testimony, Tr. 508:22-509:6.] Nicole Sabatina did assist Anna McClary in financial matters after

Ms. McClary was financially exploited by scammers. [Jeannean Sabatina Testimony, Tr. 128:10-21; Sheila Clark Testimony, Tr. 509:7-16.]

Nicole Sabatina became Anna McClary's conservator in March 2015 and later became her guardian. [Id. Tr. 509:21-510:24; Jeannean Sabatina Testimony, Tr. 128:22-129:2. When Nicole Sabatina became Anna McClary's conservator, Anna McClary was living at Heritage Palmeras, an independent living facility. [Sheila Clark Testimony, Tr. 510:25-511:4.] Anna McClary enjoyed living at Heritage Palmeras, participated in social activities, and was free to come and go as she pleased. [Id. at Tr. 511:13-512:1.] There were no visitation or communications restrictions in place when Anna McClary lived at Heritage Palmeras. [Id. at Tr. 515:13-20.] Heritage Palmeras was located approximately 5 miles from Sheila Clark's house. [Id. at Tr. 512:7-8.]

While a resident at Heritage Palmeras, Anna McClary went to church, went out to lunch with friends, and took herself to doctors' appointments. [Id. at Tr. 512:2-6.] Sheila Clark thought Heritage Palmeras was the perfect facility for her mother because it was an all-encompassing facility that provided independent living, assisted living, and memory care, which meant her mother would not have had to move if she needed a higher level of care. [Id. at Tr. 511:3-12.]

Over Anna McClary's objections, the Sabatinas scheduled an appointment with her physician seeking to obtain orders that Anna McClary be admitted to an

assisted living facility. [Jeannean Sabatina Testimony, Tr. 131:19-133:5; Ex. 81 at SAB-002730; Sheila Clark Testimony, Tr. 519:14-17.] The Sabatinas disregarded Anna McClary's expressed residence and physician preferences. [Id. at Tr. 519:14-20; Ex. 81 at SAB-002730-002731.]

Anna McClary's longtime psychologist, Dr. Kahlon, did not feel that Anna McClary needed assisted living. [Id. at Tr. 541:24-542:14.] Anna McClary's physician did not sign an order suggesting Anna McClary be admitted to an assisted living facility. [Jeannean Sabatina Testimony, Tr. 133:6-134:4, Ex. 81 at SAB-002731.] After Anna McClary's physician refused to sign the admission paperwork for assisted living, the Sabatinas scheduled an appointment with another doctor in attempt to have the assisted living orders signed. [Jeannean Sabatina Testimony, Tr. 134:5-17; Ex. 81 at SAB-002731.]

The Sabatinas changed Anna McClary's neurologist from the one she had been seeing for approximately eight to ten years to Dr. Johnson. [Sheila Clark Testimony, Tr. 512:16-513:15; Ex. 81 at SAB-002731-33.] Jeannean Sabatina, acting in her capacity as a care manager for Anna McClary, met with Dr. Darry Johnson, a neurologist who had never seen Anna McClary, days prior to Anna McClary's appointment to explain the need for him to sign the assisted living paperwork. [Jeannean Sabatina Testimony, Tr. 136:3-137:9; Ex. 81 at SAB-002733.] Dr. Johnson accommodated the Sabatinas' request to sign the admission

orders for Anna McClary's placement in assisted living. [Jeannean Sabatina Testimony, Tr. 137:15-138-7; Ex. 81 at SAB-002733, 002738.]

Jeannean Sabatina told Sheila Clark that the Sabatinas were changing Anna McClary's physician to Dr. Johnson because he would not do what Jeannean Sabatina wanted him to do. [Sheila Clark Testimony, Tr. 513:12-22.] Anna McClary had visited with Dr. Johnson only two times. [Id. at Tr. 513:23-514:23; Ex. 81, SAB-002738.] Using the recommendation of Dr. Johnson, Jeannean moved Anna McClary to assisted living at Brookdale Sandridge. [Id. Tr. 541:2-12; Ex. 81 at SAB-002736.] The Sabatinas took Anna McClary to Sandridge immediately after her second appointment with Dr. Johnson. They did not tell her she was moving to Sandridge and instructed Sheila Clark not to tell her she was moving. She had no clothes, toiletries, or personal items when dropped off at Sandridge. [Sheila Clark Testimony, Tr. 521:24-524:19.] Sheila Clark made Nicole and Jeannean Sabatina aware of her objection to Anna McClary's move to assisted living. [Id. at Tr. 541:13-23.]

Anna McClary liked living at Heritage Palmeras and did not want to move to Brookdale Sandridge, the assisted living facility. [Id. at Tr. 518:13-19; Jeannean Sabatina Testimony, Tr. 130:20-131:4; 131:19-24; Ex. 81 at SAB-002730.] Anna McClary informed the Sabatinas that she did not want to move to Sandridge. [Sheila Clark Testimony, Tr. 519:14-17.] The Sabatinas placed Anna McClary at Brookdale

Sandridge because she wasn't cooperating with them. For instance, she scheduled and went to doctor's appointments without informing Nicole Sabatina, and she had friends the Sabatinas did not approve of. [Id. at Tr. 514:24-515:12.]

Sheila Clark was not permitted to visit her daughter for three weeks after Anna McClary was moved to Brookdale Sandridge. [Id. Tr. 515:21-516:2; 524:20-23.] This is a pattern of the Sabatinas to distance relatives from the ward to control them. The restrictions placed upon Anna McClary while she was at Sandridge were placed by the Sabatinas, not by the facility. [Id. at Tr. 545:2-8.] This is also a pattern of the Sabatinas to gain and maintain financial control of the ward. Sandridge was approximately 20 to 25 minutes away from Sheila Clark's house. [Id. at Tr. 519:21-22.]

In violation of her civil rights, Jeannean Sabatina decided whether Anna McClary could go to church. [Id. at Tr. 516: 2-20.] The Sabatinas refused to allow Anna McClary to travel with Sheila Clark to visit family out of state because the trip would have disrupted her routine. [Id. at Tr. 528:23-529:23.]

While Anna McClary was a resident at Brookdale Sandridge, she left the facility without telling anyone where she was going. As a result, Nicole asked Jeannean on January 14, 2016, to contact and inform the Brookdale Sandridge staff that Anna McClary was not to have any outings for two to three weeks. The restriction included outings with her daughter. [Jeannean Sabatina Testimony, Tr.

138:22-140:8; Ex. 81 at SAB-002740.] This action was clearly done to punish McClary and further control her freedoms and preferences.

Jeannean Sabatina punished McClary further than requested. She notified Brookdale Sandridge that Anna McClary was not to have any outings until further notice. [Id. at Tr. 140:2-8; Ex. 81 at SAB-002741.]

On January 28, 2016, Nicole Sabatina sought Jeannean Sabatina's advice as to whether Anna McClary's daughter, Sheila Clark, should be able to visit Anna McClary. Jeannean Sabatina suggested restricting visits for an additional week. [Jeannean Sabatina Testimony, Tr. 141:22-142:5; Ex. 81 at SAB-002746.] This controlling and punishing conduct was intentional and in complete disregard of the ACJA. Notwithstanding, on March 6, 2016, Jeannean Sabatina "again" informed Brookdale Sandridge staff that Anna McClary was not to have access to a telephone. [Id. at Tr. 147:3-14; Ex. 81 at SAB-002755.]

It is another pattern of the Sabatinas to take more drastic moves to isolate the ward by moving the ward into a lock down memory facility. In March 2016, Anna McClary moved to a memory care facility called Pathways. [Jeannean Sabatina Testimony, Tr. 149:20-24; Ex. 79 at SAB-002716.] The move to Pathways was over Anna McClary's objections. [Sheila Clark Testimony, Tr. 519:23-520:9.] Pathways is 25-30 minutes from Sheila Clark's house. [Id. at Tr. 520:13-15.] Pathways was a lock down facility. Anna McClary was not allowed to leave the premises on her own.

[Id. at Tr. 548:10-549:1. Anna McClary was not content at Pathways. [Id. at Tr. 547:18-548:5.]

While Sheila Clark toured the Pathways facility and felt it was a nice facility, she questioned the necessity of Anna McClary's move to Pathways. [Id. at Tr. 549:2-10.] The Sabatinas also prohibited long-time friends of Anna McClary's from visiting her because the friends objected to Anna's placement in memory care and felt that she had been stripped of her rights as a human being. [Jeannean Sabatina Testimony, Tr. 149:25-152:1; Ex. 81 at SAB-002771-72.]

There was no "substantial" harm concern that caused the Sabatinas to move McClary to a lock down memory facility. When asked whether Anna McClary's friends' expression of their negative response to Anna McClary's living situation was a substantial harm to Anna justifying visitation restrictions, Jeannean Sabatina would only say it could cause harm. [Jeannean Sabatina Testimony, Tr. 152:11-17.] Despite having no authority to do so, Jeannean Sabatina denied Anna McClary's request to purchase curtains for her room at Pathways. [Id. at Tr. 152:18-153:10; Ex. 81 at SAB-002773.]

The Sabatinas went further in a punitive fashion. They would not authorize Anna McClary to take a family trip or go on overnight outings with her family because they did not want to upset her routine. [Id. at Tr. 154:1-6; Ex. 81 at SAB-002776-002779.] Jeannean Sabatina directed Pathways staff not to provide any

information about Anna McClary to her daughter because she was to get information about her mother from the guardian. [Id. at Tr. 157:17-158:19; Ex. 81 at SAB-002794.] Nicole Sabatina denied Sheila Clark's request to have Anna McClary stay with her for a few days over Christmas. [Id. at Tr. 156:12-157:2; Ex. 81 at SAB-002794.] Nicole Sabatina only authorized Anna McClary's overnight Christmas visit with her daughter after receiving an inquiry from the Area Agency on the Aging regarding the denial of the visit. [Id. at Tr. 158:20-159:2; 160:3-161:15, Ex. 81 at SAB-002802.]

The Sabatinas charged Anna McClary's estate \$441.00 for taking, and to discuss taking, Anna McClary to an eye exam, when her daughter offered to do it for free. [Pasquale Fontana Testimony, Tr. 666:4-669:22; Ex. 81 at SAB-002775.] Jeannean Sabatina characterized Sheila Clark's requests for her mother to be able to go on a family trip as "stir[ring] the pot" and "cost[ing] the estate money." The Sabatinas billed Anna McClary's estate \$326.50 to address the requests. [Id. at Tr. 669:24-675:7; Ex. 81 at SAB-002777.] The Sabatinas charged Anna McClary's estate \$184.00 to deliver \$20.00 to her. [Id. at Tr. 676:7-678:14; Ex. 81 at SAB-002789.]

Jeannean Sabatina had no decision-making authority as it relates to the ward in an instance such as the McClary case where Nicole Sabatina was appointed the

guardian and conservator and Jeannean Sabatina was not nominated in any document. [Nicole Sabatina Testimony, Tr. 276:5-23; 277:9-278:10.]

The Greens

Jeannean Sabatina informed Bernie and Richard Green's children that they would no longer be able to stay with their parents when they visited. [Sealed Ex. 39 at SAB-001183.]

Jeannean Sabatina decided that the Greens' telephone would be disconnected, and all visits would be restricted for two weeks to prevent Bernie Green from communicating with her children and possibly giving away her personal property. [Sealed Ex. 39 at SAB-001222-23.] The Greens were upset that their telephone was disconnected. [Id. at SAB-001228.]

One of the Greens' children contacted the Ombudsman complaining that the family was not allowed to visit the Greens. [Id. at SAB-001234.] After contact from the Ombudsman, family contact and visitation with the Greens was restored. [Id. at SAB-001236.]

When alerted that Bernie Green's daughters might provide her with a cell phone, Jeannean Sabatina informed a Green family member that if that should happen, she would confiscate the phone and restrict the daughters from further visitation. [Id. at SAB-001236.] Jeannean Sabatina denied Bernie Green's repeated requests for a telephone and computer and remarked in the WLJ billing statement:

"Bernie is still requesting a telephone and computer. The answer was no when she asked me last week. The answer will continue to be no. I will remove the monitor, and I will take Bernie's cash when I see her on Wednesday." [Id. at SAB-001237.]

Jeannean Sabatina determined that family visits with the Greens were required to be supervised. [Id. at SAB-001238.] After disconnecting the Greens' telephone and being informed by the Groves' facility staff that Bernie Green was tying up the facility phone, Jeannean Sabatina prohibited all family calls. She determined that notes and cards would be sufficient for family communications. [Id. at SAB-001239.]

Jeannean Sabatina notified the Greens' family that any questions they had regarding the Greens' inability to access a telephone or computer or their plan of care should be directed to attorney Larry Scaringelli and he would invoice the family member for the contact. [Sealed Ex. 39 at SAB-001241.]

Jeannean Sabatina denied Bernie Green's request to have her telephone all day on Thanksgiving so that she could talk to her family, claiming Richard Jr.'s visit on Thanksgiving was sufficient. [Sealed Ex. 39 at SAB-001261.]

Sonia Grove

The Sabatinas imposed visitation and contact restrictions while Sonia Grove was at Banner Del Webb Hospital, allowing visitation from only WLJ staff and Ms. Grove's court-appointed attorney. On one occasion, Jeannean Sabatina lifted the

restriction for family visitation. [Sealed Ex. 194 at SAB-005762-66, 005772, 005774.]

The Sabatinas put contact and visitation restrictions in place while Sonia Grove was at the Palos Verdes facility, authorizing certain visits while restricting family visitation. Jeannean Sabatina denied a request from facility residents to visit Sonia Grove, because it would be difficult for Ms. Grove's family to understand why they could not visit but the residents could. [Id. at SAB-005784.]

Irene Petro

Jeannean Sabatina denied a request for Irene Petro to spend the Thanksgiving holiday with a fellow Pathways resident's family, requiring instead, that Ms. Petro remain at Pathways for Thanksgiving. [Sealed Ex. 20, at SAB-000772-000775.] In denying the request, Jeannean Sabatina failed to provide any reasoning or indication that substantial harm would result from the visit. [Id.]

Based on the foregoing findings, Jeannean and Nicole Sabatina did not make all decisions in a manner that promoted the civil rights and liberties of wards or protected persons in violation of ACJA § 7-202(J)(3).

Based on the foregoing findings, Jeannean and Nicole Sabatina did not make decisions that maximized the independence and self-reliance of wards or protected persons in violation of ACJA § 7-202(J)(3).

Based on the foregoing findings, Jeannean and Nicole Sabatina did not make reasonable efforts to determine the preferences of the wards or protected persons regarding decisions they, as fiduciaries, were empowered to make in violation of ACJA § 7-202(J)(3)(a).

Jeannean and Nicole Sabatina failed to offer evidence suggesting their disregard for wards' and protected persons' preferences was based on their determination that honoring the wards' and protected persons preferences would result in substantial harm.

Based on the foregoing findings, Jeannean and Nicole Sabatina violated ACJA § 7-202(J)(3)(b).

Based on the foregoing findings, Jeannean and Nicole Sabatina did not ensure that wards, such as Janette Kimble and Anna McClary, resided in the least restrictive environment available, thereby violating ACJA § 7-202(J)(4).

The Sabatinas failed to offer evidence suggesting the contact and visitation restrictions they imposed on wards' family and friends were necessary to prevent substantial harm.

Based on the foregoing findings, Jeannean and Nicole Sabatina violated ACJA § 7-202(J)(4)(e) by restricting wards' contact with family and friends when it was not necessary to prevent substantial harm.

Formal Charge 7. Operating under an assumed name.

At some point after being licensed as a fiduciary, Jeannean Sabatina began operating under an assumed corporate name to limit her liability. The limited liability umbrella of a corporate entity used was With Love, Jeannean, LLC. It is otherwise referred to in this ruling as WLJ. Licensees asked their expert Alisha Gray, if she had an opinion whether having that entity licensed would help. The expert answered, "Well I certainly would have recommended it . . ." [Alisa Gray Testimony at 1094:20-22.]

When asked why, Ms. Gray testified, "I looked through that code to find the exact citation that says at this point you must get your entity licensed or so forth -- my understanding of the reason for having the licensing is more anecdotal . . ." [Id. at 1096:1-4.] She also acknowledged that "most of the fiduciaries that I have worked with do have their entities licensed." We give no weight to her later testimony that she could not find a direct reference to the requirement for licensure an WLJ. We look to the code itself.

This testimony led to the following questions and answers.

Q. Are you aware that With Love, Jeannean was identified on both of their applications with the Board as a DBA, the applications for fiduciary licensure, I should clarify?

A. That's my understanding, yes.

Q. Do you have any problem with that?

A. No. But I would have gone the extra step and gotten it licensed.

[Id. at 1096:4-10.]

Counsel are accorded wide latitude in the conduct of cross-examination. However, Counsel do not have the right to lead on direct examination unless the questions are preliminary. *Watts v. Golden Age Nursing Home*, 127 Ariz. 255 (1980). Regardless, argumentative questions are forbidden regardless of whether they occur during direct or cross examination. *Pool v. Superior Court*, 139 Ariz. 98 (1984). Such a question does not ask for new factual testimony, but instead seeks for the witness to acquiesce in the inferences drawn by counsel from the prior testimony. It is likewise improper to ask questions that insinuate the existence of facts that will not be the subject of proof. *Taylor v. Cate*, 117 Ariz. 367 (1977).

The parties stipulated in JPS 1 that Jeannean Sabatina initially applied for licensure in 2008. JPS 5 stipulates that, "Jeannean Sabatina has had an ownership interest in With Love, Jeannean ("WLJ") from 2011 through the present." The answer of Licensees admits that WLJ was incorporated in July of 2011. That was also the testimony of Jeannean Sabatina.

Q. And then when you became a licensed fiduciary, you included that under the umbrella with, With Love Jeannean, or you were already a licensed fiduciary and then opened With Love Jeannean?

A. I was already licensed when I transitioned to With Love Jeannean.

[Id. at 1068:13-18.]

The application for initial certification as a fiduciary of Jeannean Sabatina predated the existence of WLJ. The initial application for certification while not an exhibit in this proceeding, remains part of the file of Jeannean Sabatina. It was signed and dated February 24, 2009. It has no DBA listed on the application. Each application has a box to identify whether an applicant is "acting individually" or is "Business Associated." She marked the box as "acting individually."

The answer of Licensees admits that Nicole Sabatina formed a limited liability company named after herself in July 2013 and that she became a 50% owner of WLJ in December of 2015. The answer admits that each of the Licensees were acting DBA With Love Jeannean, LLC from 2013 to the date of their answer. [Answer, pp. 4:22-5:5.]

Ms. Gray was also asked about a footnote in the answer of Licensees. [Ex. 357, p. 19, fn. 5.] It states that,

Undersigned counsel has advised the Sabatinas that entity licensure is, as a logical construct of the governing statutory and regulator corpus, mandated when licensed fiduciaries operate dba. The construct is implied by ACJA Section 7-202(E)(5)(a)(1). They (the Licensees) simply did not know this.

The Notice of Formal Charges is specific. It alleges a violation of ACJA§ 7-201(F)(3). It provides that,

A certificate holder shall not transact business in this state under an assumed name or under any designation, name or style,

corporate or otherwise, other than the legal name of the individual or business entity unless the person or business entity files with division staff a statement indicating the name for transaction of the business and the legal full name of the certificate holder.

It is a fact that Licensees operated under an assumed name as fiduciaries. Both Jeannean and Nicole have provided fiduciary services under the WLJ name. [Tr. 33:8-12, 34:5-8.] Additionally, Nicole has provided fiduciary services under "Nicole L. Sabatina, LLC." [Tr. 173:7-9.] Neither WLJ nor Nicole L. Sabatina, LLC, are licensed fiduciary entities. [Tr. 32:9-12, 173:10-15.] Accordingly, Jeannean and Nicole violated ACJA § 7-201(F)(3).

Formal Charge 8. Failure to report fiduciary misconduct.

It is required that under ACJA § 7-202(F)(10), "[a] fiduciary shall notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising a substantial question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary." The notification must be made in compliance with ACJA § 7-201(H). Under ACJA § 7-201(H)(6)(a), a licensee is subject to disciplinary actions if the board finds that certificate holder failed to perform any duty required under the ACJA.

It is easy to speculate why licensees were blind to each other's misconduct. But that relates only to purpose. This hearing officer has drawn subjective

conclusions from the objective facts to assure an evidence-based determination. The evidence is clear and convincing that the above described misconduct occurred and that a reasonable person would have easily recognized it was occurring and improper. No reasonable explanation was offered, nor was the methodology of their conduct unique which might evidence negligence. The pattern of conduct reflects intentional conduct.

There is a natural tendency to include bias for one's own work. The Licensees have expressed both their remorse and to some extent their acknowledgement of certain violations. The goal of a trial is to find the truth about disputed questions. The evidence properly compares the actions to the duties as stated in the ACJA, Statutes, Rules, and court orders.

Based on the above findings, Jeannean and Nicole engaged in misconduct as fiduciaries that raised substantial questions as to their honesty and trustworthiness. Jeannean never alerted the Division that Nicole engaged in misconduct as a fiduciary. [Tr. at 679:11–15.] Likewise, Nicole never alerted the Division that Jeannean engaged in misconduct as a fiduciary [Tr. at 679:16–20.] Accordingly, each violated ACJA § 7-202(F)(10) by failing to report the other had engaged in misconduct as a fiduciary.

VI. FINAL CONCLUSIONS OF LAW

This matter involved multiple wards, multiple misdeeds and the absence of caring about clear violations of rules, law and the ACJA. That is likely because neither thought from the information they controlled that they would be or could be questioned and caught. This epitomized by their lack of reporting their ownership of WLJ to the court. It is exemplified by their callous and successful efforts to profit themselves. It is clear they planned for that profiteering by assuring there would be no impartial witnesses to testify regarding their interactions with Kimble and others, by their utilization of each other to “verify” what occurred.

I. MITIGATING AND AGGRAVATING FACTORS

Mitigating Factors

Certain intangibles, if correctly identified, can be useful factors in evaluating a licensee after a determination of a violation. These intangibles can lend insight into whether strategies short of non-licensure might bring about a needed conduct improvement. A licensee genuinely remorseful for the damage caused has a better chance to be rehabilitated than one cavalier about the improper conduct. However, there can also be an ease with which one feigns remorse and good intentions. It is not the duty of the Board to “catch” an offender. It is the duty of the individual to halt their own behavior. As a result, it is important for the Board to exercise skepticism, but not be cynical.

1. The absence of a prior disciplinary record. Absence of such a record, standing alone, is given little weight. *See, e.g., In re Elowitz*, 177 Ariz. 240 (1994). There was no evidence submitted that either Licensee had a prior disciplinary record. This is a mitigating factor.
2. Full and free disclosure to the division staff. From the review of the extensive file and the detailed responses, it is apparent Licensees initially hired an attorney who was legally capable but did not make full and free disclosure. Their subsequent attorney who handled this proceeding worked hard to disclose the information he had. Neither Licensee had to agree with or follow his advice in that regard. That they did is a strong mitigating factor because it demonstrates professionalism.
3. Cooperative attitude toward the proceedings. Licensees had a cooperative attitude towards the proceedings. There was no evidence of rudeness or ill will towards the process. While the proceeding was vigorously litigated, there appeared to be cooperation throughout. This is a mitigating factor.

Aggravating Factors

- A. Dishonest Motive. Multiple wards were in the Sabatinas' individual and often joint care. Their joint actions enabled each other to violate

the multiple safeguards of law, rules and the ACJA. Their use of the company they each had ownership was not reported. The argument they may have listed the name of the company on later renewal applications, cannot constitute a "statement" under the ACJA. Their joint efforts were dishonest and gave them control of not merely the assets of their wards, but of the relationships they and only they permitted. This is a strong aggravating factor. A court is likely to find a dishonest motive when an individual personally and financially benefits from the misconduct. This personal and financial gain is obvious. Charging three and four times the actual cost of a nurse exemplifies this.

- B. Selfish Motive. All these acts of commission and omission by Licensees selfishly profited each personally. A dishonest or selfish motive always occurs when one seeks financial gain through billing or fee-related practices. This is a strong aggravating factor because it is the opposite of the service required for a fiduciary.
- C. Multiple offenses. Multiple wards are involved in these proceedings. In many of the cases of these wards, Licensees violated multiple sections of the ACJA, and Arizona law. This is a strong aggravating factor.

- D. Submission of false evidence, false statements or other deceptive practices during the process. While there were multiple false and deceptive practices in the underlying matters, the proceeding had few as part of their defense. This is not an aggravating factor.
- E. Failure to acknowledge wrongful nature of the conduct. Licensees failed to acknowledge the wrongful nature of their joint and individual conduct until the case was clearly proven. While their final acknowledgement has a mitigating aspect, it does not overcome this aggravating factor was present.
- F. Vulnerability of the victim. Each of the wards were extraordinarily vulnerable.
- G. Substantial experience in the profession. Jeanine Sabatina has long been a licensed fiduciary of over ten years.
- H. Indifference to making restitution. The evidence was conflicted between what were restitution payments by voluntary adjustments versus what was court ordered. There were remedial steps taken. These were too little, too late, and not entirely voluntary. It is an aggravating factor.

Individuals are conscious agents with the capacity to think, feel, choose, and act. Licensees do not operate by blind, automatic forces. Ignorance of one's own

short fallings is never a valid excuse. When one attempts to avoid liability by closing eyes to facts, a willful blindness is a practical aggravating factor. In such circumstances there is a proper classifying, analyzing and determining levels of wrongness.

Regardless how we evaluate mitigation, it is often a measuring of the recognition by an individual of their own shortcoming and responsibility for misconduct. Remorse is the boiling down of allegations to an individual acceptance of responsibility by a licensee that is then followed by a clear turning away from that misconduct and striving to right the wrong. It requires an inward reflection of the truth. It is not a reward of that misconduct to apply mitigation. The presence of mitigation is the acceptance of the authority of being held accountable. Such mitigation is marginally present. The aggravating factors strongly outweigh the mitigating factors.

VII. RECOMMENDATION

It is recommended that the Board affirm its decision to revoke the licenses of Jeannean Sabatina and Nicole Sabatina. The aggravating factors strongly outweigh the mitigating factors.

DATED this 15th day of November 2019.

William J. O'Neil
William J. O'Neil, Hearing Officer

**COPY of the foregoing mailed/e-mailed
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EXHIBIT A

APPENDIX A

In eight separate counts, Jeannean and Nicole were charged with violations of the following court rules and ACJA sections:

Count 1. Conflict of Interest. ACJA § 7-201(E)(2)(c)(b)(iii), (G)(4)(c), (H)(6)(a), (H)(6)(g)–(h), (H)(6)(j), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(8); ACJA § 7-202(J)(2)(a), (b)(1)–(3)(a).

ACJA § 7-201(E)(2)(c)(2)(b)(iii):

The board may deny certification of any applicant if . . . [t]he applicant or an officer, director, partner, member, trustee, or manager of the applicant: Has conduct showing the applicant or an officer, director, partner, member, trustee, or manager of the applicant is incompetent or a source of injury and loss to the public.

ACJA § 7-201(G)(4)(c):

The board may deny renewal of certification for any of the reasons stated in subsection (E)(2)(c).

ACJA § 7-201(H)(6):

***Grounds for Discipline.* A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:**

- a. Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA.**
- g. Exhibited gross negligence.**
- h. Exhibited incompetence in the performance of duties.**
- j. The existence of any cause for which original certification or renewal of certification could have been denied**

pursuant to subsections (E)(2)(c) or (G)(4)(c) and the applicable section of the ACJA.

- k. (6) Failed to practice competently by use of unsafe or unacceptable practices.
- k. (7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in a similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer.
- k. (8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice.

ACJA § 7-202(J)(2)(a):

Relationship with the Ward or Protected Person. The fiduciary shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate. The fiduciary shall manage and protect the personal and monetary interests of the ward or protected person and foster growth, independence and self reliance to the maximum degree.

b. The fiduciary shall:

- (1) Avoid self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety. Self-dealing, a conflict of interest, or impropriety arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent. A conflict of interest may also arise if the fiduciary has dual or multiple relationships with a ward that conflict with each other or has a conflict between or among the best interests of two or more wards.

- (2) Maintain independence from all service providers to enable the fiduciary to coordinate services, challenge inappropriate or poorly delivered services, and act in the best interests of the ward or protected person.
- (3) Unless otherwise authorized by the court, the fiduciary shall not:
 - (a) Provide non-fiduciary services to the ward or protected person if the fiduciary or a person or entity closely related to the fiduciary has a personal or financial interest. For the purposes of this subsection, "closely related" includes a spouse, child, parent, sibling, grandparent, aunt, uncle, or cousin of the fiduciary, and any business, partnership, corporation, limited liability company, trust, or other entity that the fiduciary or a closely related person has a financial interest in, is employed by, or receives compensation or financial benefit from.

Count 2. False and Misleading Budgets. ACJA § 7-201(H)(6)(a), (H)(6)(g)–(h), (H)(6)(j), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(8); ACJA § 7-202(J)(1)(a), (c)(2)–(3).

ACJA § 7-201(H)(6)(a), (H)(6)(g)–(h), (H)(6)(j), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(8):

See Count 1.

ACJA § 7-202(J)(1)(a), (c)(2)–(3):

- a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.
- c. The fiduciary shall:

- (2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;
- (3) Not knowingly file any document with the court of present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts.

Count 3. False and Misleading Affidavits. ACJA § 7-201(H)(6)(a), (H)(6)(g)–(h), (H)(6)(j), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(8); ACJA § 7-202(J)(1)(a), (c)(2)–(3); Arizona Rule of Probate Procedure 20; A.R.S. § 14-5106(A)(2), (4), (11).

ACJA § 7-201(H)(6)(a), (H)(6)(g)–(h), (H)(6)(j), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(8):

See Count 1.

ACJA § 7-202(J)(1)(a), (c)(2)–(3):

See Count 2.

Arizona Rule of Probate Procedure 20:

Before the court appoints any person as a guardian or conservator, the person shall complete and file with the court the disclosure affidavit required by A.R.S. § 14-5106.

A.R.S. § 14-5106(A)(2), (4), (11):

A. Before being appointed as a temporary or permanent guardian or conservator every proposed appointee, except entities referred to in § 14-5411, subsection B, shall provide to the court, under oath, the following information:

2. Whether or not the proposed appointee has acted as guardian or conservator for another person within three years of the petition and, if so, the number of individuals for whom the proposed appointee is currently serving and the number of individuals for whom the proposed appointee's appointment has been terminated within the three-year period.
4. Whether or not the proposed appointee has acted within three years of the petition in a fiduciary capacity pursuant to a power of attorney and, if so, the number of persons for whom the appointee has so acted. If the proposed appointee has ever acted in such capacity for the proposed ward or protected person, the proposed appointee shall specify the date of execution of such power of attorney, the place where the power of attorney was executed, the actions taken by the proposed appointee pursuant to such power of attorney and whether or not such power of attorney is currently in effect.
11. Whether or not the proposed appointee has an interest in any enterprise providing housing, health care or comfort care services to any individual, and, if so, the name and address of each such enterprise and the extent of each such interest.

Count 4. Failure to Timely Amend Budgets. ACJA § 7-201(H)(6)(a), (H)(6)(g)-(h), (H)(6)(j), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(8); ACJA § 7-202(J)(1)(a), (c)(2)-(3); Arizona Rule of Probate Procedure 30.3.

ACJA § 7-201(H)(6)(a), (H)(6)(g)-(h), (H)(6)(j), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(8):

See Count 1.

ACJA § 7-202(J)(1)(a), (c)(2)-(3):

See Count 2.

Arizona Rule of Probate Procedure 30.3:

- D. The conservator shall file an amendment to the budget and provide notice in the same manner as the initial budget within thirty days after reasonably projecting that the expenditures for any specific category will exceed the approved budget by a threshold prescribed by the Arizona judicial council and as set forth in the instructions for the conservator's budget as adopted in the Arizona code of judicial administration.**
- E. An interested person may file a written objection to the budget or amendment within fourteen days after the filing date of the budget or amendment. On the filing of a written objection, the court may overrule all or part of the objection, order a reply by the conservator or set a hearing on the objection. The court may also set a hearing in the absence of an objection. At a hearing, the conservator has the burden to prove that a contested budget item is reasonable, necessary and in the best interest of the protected person. If an interested person fails to object to a budget item within fourteen days after the filing date of the budget or amendment, the budget item shall be deemed presumptively reasonable at the time of the conservator's account.**
- F. The court may order that a budget is accepted in the absence of an objection. On the court's own motion or upon the filing of a written objection, the court shall approve, disapprove or modify the budget to further the protected person's best interest.**

Count 5. Violated Statewide Fee Guidelines. ACJA § 7-201(E)(2)(c)(b)(iii), (G)(4)(c), (H)(6)(a), (H)(6)(g)-(h), (H)(6)(j), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(8); ACJA § 3-303(C), (D)(2)(c), (D)(2)(g)(2), (D)(2)(k), (D)(2)(l), (D)(3)(c)(1), (D)(3)(c)(3), (D)(3)(c)(4), (D)(3)(l), (D)(3)(m), (D)(3)(q).

ACJA § 7-201(E)(2)(c)(2)(b)(iii):

See Count 1.

ACJA § 7-201(G)(4)(c):

See Count 1.

ACJA § 7-201(H)(6)(a), (H)(6)(g)–(h), (H)(6)(j), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(8):

See Count 1.

ACJA § 7-303(C), (D)(2)(c), (D)(2)(g)(2), (D)(2)(k), (D)(2)(l), (D)(3)(c)(1), (D)(3)(c)(3), (D)(3)(c)(4), (D)(3)(l), (D)(3)(m), (D)(3)(q):

C. *Purpose.* Pursuant to Rule 33(F), Arizona Rules of Probate Procedure, "When determining reasonable compensation, the superior court shall follow the statewide fee guidelines set forth in the Arizona Code of Judicial Administration." Therefore the use of these guidelines is mandatory.

D. Use of the Fee Guidelines.

2. *Compensation of the Professional.* Unless otherwise ordered by the court, compensation and reimbursement for professional services shall meet the following requirements:

c. "Block billing" is not permitted. Block billing occurs when a timekeeper provides only a total amount of time spent working on multiple tasks, rather than an itemization of the time expended on a specific task.

g. The hourly rate charged for any given task shall be at the authorized rate, commensurate with the task performed, regardless of whom actually performed the work, but clerical and secretarial activities are not separately billable from the Professional. The Professional shall abide by the following requirements

(2) A fiduciary may only bill a fiduciary rate when performing services that require the skill level of the fiduciary; a companion rate when performing companion services; a bookkeeper rate when performing bookkeeping and bill-paying services for a client; and shall not charge when performing secretarial or clerical services, for example.

- k. Time and expenses to correct or mitigate errors caused by the professional, or their staff, are not billable to the Estate.
 - l. Time or expenses to respond or defend against a regulatory complaint against the professional and the professional's licensed business entity are not billable to the Estate.
3. *Judicial Officer Review.* The judicial officer shall consider the following general compensation factors when reviewing hourly rates and charges and determining what constitutes reasonable compensation:
- c. Common fiduciary services rendered in a routine guardianship or conservatorship engagement. The fiduciary shall provide a reasonable explanation for exceeding these services. The common fiduciary services are:
 - (1) Routine bookkeeping, such as disbursements, bank reconciliation, data entry of income and expenditures, and mail processing: four (4) hours per month, at a commensurate rate for such services;
 - (2) One routine personal visit per month by the fiduciary to the ward or protected person;
 - (3) Preparation of conservator's account and budget: five (5) hours per year.
 - d. The work actually performed, including the time actually expended, and the attention and skill-level required for each task, including whether a different person could have rendered better, faster, or less expensive service;
 - e. The result, specifically whether benefits were derived from the efforts, and whether probable benefits exceeded costs;
 - f. The fidelity and loyalty displayed by the Professional, including whether the Professional put the best interest of the Estate before the economic interest of the professional.

Count 6. Restricted Contact. ACJA § 7-202(J)(3)(a)–(b), (J)(4)(e).

ACJA § 7-202(J)(3)(a)–(b), (J)(4)(e):

J. Code of Conduct. This code of conduct is adopted by the supreme court to apply to all licensed fiduciaries, pursuant to A.R.S. § 14-5651(A)(1) in the state of Arizona. The purpose of this section is to establish minimum standards of performance for licensed fiduciaries." ACJA § 7-202(J).

3. Decision Making. The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.

a. The fiduciary shall make all reasonable efforts to determine the preferences of the ward or protected person, both past and current, regarding all decisions the fiduciary is empowered to make.

b. The fiduciary shall make decisions in accordance with the determined preferences of the ward or protected person, past or current, in all instances except when the fiduciary is reasonably certain the decision will result in substantial harm.

4. Guardianship. The fiduciary acting as guardian shall assume legal custody of the ward and shall ensure the ward resides in the least restrictive environment available. The fiduciary or the fiduciary's qualified representative, if the ward is located outside the country or state, shall visit the ward no less than quarterly and as often as is necessary to ensure that client's well-being. The fiduciary shall assume responsibility to provide informed consent on behalf of the ward for the provision of care, treatment and services and shall ensure this care, treatment and services represent the least restrictive form of intervention available.

e. The fiduciary shall not remove the ward from the home of the ward or separate the ward from family and friends unless this removal is necessary to prevent substantial harm or because of financial constraints. The fiduciary shall make every reasonable effort to ensure the ward resides at home or in a community setting.

Count 7. Operating Under and Assumed Name. ACJA § 7-201(H)(6)(a), (E)(6), (F)(3).

ACJA § 7-201(H)(6)(a):

See Count 1.

ACJA § 7-201(E)(6):

Cease and Desist Order. The board, upon completion of an investigation or disciplinary proceeding, may issue a cease and desist order pursuant to subsection (H)(24)(a)(6)(g). A hearing officer or a superior court judge, upon petition by the board, may enter an order for an individual or business entity to immediately cease and desist conduct constituting engagement in the practice of the profession or occupation without the required certification.

ACJA § 7-201(F)(3):

3. *Assumed Business Name.* A certificate holder shall not transact business in this state under an assumed name or under any designation, name or style, corporate or otherwise, other than the legal name of the individual or business entity unless the person or business entity files with division staff a statement indicating the name for transaction of the business and the legal full name of the certificate holder.

Count 8. Report Fiduciary Misconduct. ACJA § 7-201(E)(2)(c)(b)(iii), (G)(4)(c), (H)(6)(a), (H)(6)(g)–(h), (H)(6)(j), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(8); ACJA § 7-202(F)(10), (J)(2).

ACJA § 7-201(E)(2)(c)(b)(iii), (G)(4)(c), (H)(6)(a), (H)(6)(g)–(h), (H)(6)(j), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(8):

See Count 1.

ACJA § 7-202(F)(10):

10. *Reporting of Possible Violations.* A fiduciary shall notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising a substantial question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary. This fiduciary shall make this notification in compliance with ACJA § 7-201(H).

ACJA § 7-202(J)(2):

2. *Relationship with the Ward or Protected Person.* The fiduciary shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate.

a. The fiduciary shall manage and protect the personal and monetary interests of the ward or protected person and foster growth, independence and self reliance to the maximum degree.

b. The fiduciary shall:

(1) Avoid self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety. Self-dealing, a conflict of interest, or impropriety arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent. A conflict of interest may also arise if the fiduciary has dual or multiple relationships with a ward that conflict with each other or has a conflict between or among the best interests of two or more wards.

(2) Maintain independence from all service providers to enable the fiduciary to coordinate services, challenge inappropriate or poorly delivered services, and act in the best interests of the ward or protected person.

(3) Unless otherwise authorized by the court, the fiduciary shall not:

(a) Provide non-fiduciary services to the ward or protected person if the fiduciary or a person or entity closely related to the fiduciary has a personal or financial interest. For the purposes of this subsection, "closely related" includes a spouse, child, parent, sibling, grandparent, aunt, uncle, or cousin of the fiduciary, and any business, partnership, corporation, limited liability

company, trust, or other entity that the fiduciary or a closely related person has a financial interest in, is employed by, or receives compensation or financial benefit from.

(b) Solicit or accept incentives or gifts from service providers other than ordinary social hospitality; or

(c) Solicit or accept a gift from a ward or protected person or the estate of a ward or protected person, other than ordinary social hospitality.

(4) Upon becoming aware of a conflict of interest, immediately disclose to the court the existence and nature of the conflict.

(5) In those exceptional situations when no other services are available, seek court approval before providing direct services. When requesting court approval, the fiduciary shall demonstrate in writing and with prior notice to parties entitled to notice that all alternatives have been identified and considered and that no alternative is available that is reasonable or practical. This does not apply in an emergency situation where it is necessary for the fiduciary to provide services, to protect the best interests of the ward or protected person. The fiduciary shall document the emergency and the need for the fiduciary to provide the services.

(6) The fiduciary shall maintain a professional relationship with the ward or protected person and shall avoid personal relationships with the ward and protected person or the family or friends of the ward or protected person, unless the fiduciary is a family member, or unless such a relationship existed before the appointment of the fiduciary.

c. The fiduciary shall vigorously protect the rights of the ward or protected person against infringement by third parties.

d. The fiduciary shall, whenever possible, provide all pertinent information to the ward or protected person unless the fiduciary is reasonably certain substantial harm will result from providing this information. Pursuant to A.R.S. § 14-5651, the fiduciary shall, upon appointment as a guardian or conservator, provide "written information to the ward or protected person and all persons entitled to notice pursuant to

§ 14-5309 or 14-5405 that the fiduciary is licensed by the supreme court and subject to regulation by the supreme court." This notice shall be in the form as prescribed by the supreme court, as specified in subsection F(4).

- e. The fiduciary shall not permit or authorize trainees, support staff, or other contracted professionals to provide informed consents or enter into any contractual agreements regarding the ward or protected persons.